

C-1

GAME & FISH COMMISSION

Title 12, Chapter 4

Amend: R12-4-501, R12-4-502, R12-4-509, R12-4-510, R12-4-518



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: October 4, 2022

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

FROM: Council Staff

DATE: September 14, 2022

SUBJECT: **GAME & FISH COMMISSION**
Title 12, Chapter 4

Amend: R12-4-501, R12-4-502, R12-4-509, R12-4-510, R12-4-518

Summary:

This regular rulemaking from the Game and Fish Commission (Commission) seeks to amend five (5) rules in Title 12, Chapter 4, Article 5 regarding Boating and Water Sports. Specifically, the Commission proposes to enact amendments developed during the preceding Five-Year Review Report (5YRR), approved by the Commission in February 2021 and the Governor's Regulatory Review Council on July 7, 2021. The Commission indicates the amendments are intended to clarify rule language; ensure compliance with U.S. Coast Guard regulations; enable the Department to provide better customer service; and reduce regulatory and administrative burdens wherever possible. A detailed description of the proposed amendments to the rules can be found in Section 6 of the Commission's Notice of Final Rulemaking (NFR) preamble.

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 indicates it did not review or rely on any study in conducting this rulemaking.

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

The Commission's intent in the proposed rulemaking is to clarify current rule language; ensure compliance with U.S. Coast Guard regulations; enable the Department to provide better customer service; and reduce regulatory and administrative burdens wherever possible.

The Commission anticipates the rulemaking will result in an overall benefit to persons regulated by the rule and anticipates that the Department will incur costs related to rulemaking, updating Department publications, and related training.

The Commission anticipates the rulemaking will result in no impact to political subdivisions of this state, private and public employment in businesses, agencies or political subdivisions, or state revenues, and will not require any new full-time employees.

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 has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. The Commission has determined that the benefits of the rulemaking outweigh any costs.

6. What are the economic impacts on stakeholders?

The Commission anticipates watercraft owners and agents, and the Commission itself, to be directly affected by the rulemaking. According to the Commission, watercraft owners will benefit from the time and cost savings from being able to use a letter of documentation to register their watercraft in Arizona. Watercraft agents will benefit from being able to process transactions that involve watercraft currently documented by the U.S. Coast Guard. The Commission will benefit from increased customer satisfaction.

The Commission anticipates bearing the costs of the rulemaking associated with implementing the proposed rule amendments, such as updating publications and manuals; providing training to Department employees, third-party providers and watercraft agents; etc.

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 did not receive public or stakeholder 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?**

Pursuant to A.R.S. § 41-1037(A), if an agency proposes 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, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

The Commission indicates rules R12-4-502 and R12-4-509 both require the issuance of a permit, license, or agency authorization which meet the definition of a general permit pursuant to A.R.S. § 41-1001(11). As such, the Commission is in compliance with A.R.S. § 41-1037.

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 Commission indicates, except for the rules listed below, federal law is not directly applicable to the subject of the rules. The rules are based on state law.

For R12-4-501, federal regulation 33 C.F.R. 187 is applicable to the subject of the rule as 33 C.F.R. 187.303 establishes the terms a state must define in order to participate in the Vessel Identification System (VIS). The Department has determined the rule is not more stringent than the corresponding federal law.

For R12-4-502, federal regulation 33 C.F.R. 187 is applicable to the subject of the rule as 33 C.F.R. 187 prescribes the minimum owner, vessel, and record information requirements for States electing to participate in VIS. The Department has determined the rule is not more stringent than the corresponding federal law.

For R12-4-502, federal regulation 33 C.F.R. 174 is applicable to the subject of the rule as 33 C.F.R. 174 prescribes a standard numbering system for vessels applicable to States for approval of State numbering systems. The Department has determined the rule is not more stringent than the corresponding federal law.

11. Conclusion

This regular rulemaking from the Commission seeks to amend five (5) rules in Title 12, Chapter 4, Article 5 regarding Boating and Water Sports. Specifically, the Commission proposes to enact amendments developed during the preceding Five-Year Review Report (5YRR), approved by the Commission in February 2021 and the Governor's Regulatory Review Council on July 7, 2021. The Commission indicates the amendments are intended to clarify rule language; ensure compliance with U.S. Coast Guard regulations; enable the Department to provide better customer service; and reduce regulatory and administrative burdens wherever possible.

The Commission is seeking the standard 60-day delayed effective date for these rules pursuant to A.R.S. § 41-1032(A).

Council staff recommends approval of this rulemaking.



July 21, 2022

VIA EMAIL: grrc@azdoa.gov

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

RE: Arizona Game and Fish Department, 12 A.A.C. 4, Regular Rulemaking]

Dear Nicole Sornsins:

1. **The close of record date:** May 13, 2022
2. **Does the rulemaking activity relate to a Five Year Review Report:** Yes
 - a. **If yes, the date the Council approved the Five Year Review Report:** May 7, 2021
3. **Does the rule establish a new fee:** No
 - a. **If yes, what statute authorizes the fee:** NA
4. **Does the rule contain a fee increase:** No
5. **Is an immediate effective date requested pursuant to A.R.S. 41-1032:** No

The Arizona Game and Fish Department (Department) certifies that the preamble discloses a reference to any study relevant to the rule that the agency reviewed.

The Department certifies that the preamble states that it did not rely on it in 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**

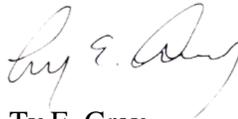
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GOVERNOR: DOUGLAS A. DUCEY COMMISSIONERS: CHAIRMAN JAMES E. GOUGHNOUR, PAYSON | TODD G. GEILER, PRESCOTT
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- 4. If applicable: If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition.**

Sincerely,

A handwritten signature in cursive script, appearing to read "Ty E. Gray".

Ty E. Gray
Director
Secretary for the Commission

**NOTICE OF FINAL RULEMAKING
TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION**

PREAMBLE

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

R12-4-501	Amend
R12-4-502	Amend
R12-4-509	Amend
R12-4-510	Amend
R12-4-518	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)

Implementing statute: A.R.S. 5-301, 5-311, 5-321, 5-321.01, 5-326, and 5-327, 5-336, 5-350, and 17-255.01

- 3. The effective date of the rules:** Pursuant to A.R.S. § 41-1032, the rules become effective sixty days after being filed in the office of the Secretary of State.
 - 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):**

Not applicable

 - 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: 28 A.A.R. 594, March 11, 2022

Notice of Proposed Rulemaking: 28 A.A.R. 553, March 11, 2022

- 5. The agency’s contact person who can answer questions about the rulemaking:**

Name: Celeste Cook, Policy and Rules Manager

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

Telephone: (623) 236-7390

E-mail: CCook@azgfd.gov

Please visit the AZGFD website to track the progress of this rule; view the regulatory agenda, five-year review reports, and learn about other agency rulemaking matters.

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 rules within Article 5 addressing boating and water sports to enact amendments developed during the preceding Five-year Review Report, approved by the Commission in February 2021 and the Governor's Regulatory Review Council in July 7, 2021. The amendments are intended to clarify rule language; ensure compliance with U.S. Coast Guard regulations; enable the Department to provide better customer service; and reduce regulatory and administrative burdens wherever possible.

An exemption from Executive Order 2021-02 was provided for this rulemaking by Buchanan Davis, Natural Resource Policy Advisor, Governor's Office, in an email dated September 8, 2021.

R12-4-501. Boating and Water Sports Definitions.

The rule establishes definitions that assist the regulated community and the public in understanding the unique terms used throughout 12 A.A.C. Chapter 4, Article 5.

U.S. Coast Guard regulation, 33 C.F.R. 187.303, establishes the terms each state must define in order to participate in the Vessel Identification System (VIS). Participating in VIS is beneficial to the citizens of Arizona because VIS is a nationwide system that collects information on vessels and vessel ownership to help identify and recover stolen vessels, deter vessel theft, and assist in deterring and discovering security-interest and insurance fraud. Since the last rulemaking, 33 C.F.R. 187.303 was amended to require state agencies to also define: "issuing authority," "secured party," "secured interest," and "titling authority." The Commission proposes to amend the rule to define the following terms: "issuing authority," "secured party," "secured interest," and "titling authority" to ensure compliance with the regulation.

R12-4-502. Application for Watercraft Registration

The rule establishes watercraft registration application requirements. The rule was adopted to ensure the Department provides and maintains the necessary information required under 33 C.F.R. 187 Vessel Identification System (VIS), which prescribes the owner and vessel information requirements for states electing to participate in VIS.

The rule requires an applicant for watercraft registration to submit one or more additional forms of documentation necessary to identify a specific watercraft and establish ownership. When the owner of a watercraft that was previously documented by the U.S. Coast Guard is now applying for registration in Arizona, the watercraft owner must submit a U.S. Coast Guard Letter of Deletion. The U.S. Coast Guard charges \$125 for this form. Currently, the National Vessel Documentation Center (NVDC) is experiencing delays in the time necessary to issue letters of deletion due to performance issues associated with its Information Technology (IT) System. This delay has resulted in the watercraft owner's inability to provide the documentation required to register the watercraft in Arizona. In an effort to provide better customer service, and after reviewing applicable statutes and rules and consulting with U.S. Coast Guard, the Commission proposes to amend the rule to allow a customer to

submit the U.S. Coast Guard Form CG-1270 or Statement of Facts form when the watercraft was documented by U.S. Coast Guard immediately preceding application for watercraft registration in Arizona. In addition, the Commission also proposes to replace "letter of documentation" with "certificate of documentation" to make the rule more concise.

R12-4-507. Transfer of Ownership of an Abandoned or Unreleased Watercraft

The rule establishes requirements for transferring ownership of an unreleased or abandoned watercraft. Under R12-4-501, "abandoned watercraft" is any watercraft that has remained: on private property without the consent of the owner; unattended for more than 48 hours on a highway, public street, or other public property; unattended for more than 72 hours on state or federal lands or on public waterways unless in a designated moorage or anchorage area. Abandoned watercraft are unsightly, pose potential threats to navigation and to the environment through the discharge of oil and other pollutants. Under R12-4-501, "unreleased watercraft" means a watercraft for which there is no written release of interest from the registered owner. This occurs when a person sells a watercraft without proper documentation, such as when a watercraft is sold and the new owner never registers it. The rule provides the regulated community with an efficient manner in which to properly dispose of abandoned/unreleased watercraft that includes: determination of abandonment; determination of ownership; a notice of intent to sell/waiver of rights process with an appropriate waiting period, determination of disposition, and transfer of ownership, when warranted. If the Department finds a person who has a lawful interest in the watercraft, the abandoned watercraft process is terminated. The Commission proposes to amend the rule to repeal the requirement that the required notice be sent by certified mail; approximately 50% of the certified letters are returned as undeliverable. The Department intends to use email to meet the notification requirements of the rule; email addresses are more likely to remain changed and provide more convenience to the public. The Commission also proposes to remove redundant language. The actions to be taken if an owner refuses to respond or fails to respond are the same, so the Commission proposes to repeal subsection (I)(1)(c) to make the rule more concise.

R12-4-509. Watercraft Agents

The rule establishes watercraft agent application requirements and the authorization process for a dealer seeking to issue a 45-day temporary certificate of number upon the sale of a watercraft. The rule requires a watercraft agent to submit documentation necessary to identify a specific watercraft and establish ownership to the Department for record retention and quality assurance purposes. With this rulemaking, the Commission proposes to amend R12-4-502 to allow a customer to submit the U.S. Coast Guard Form CG-1270 or Statement of Facts form for watercraft documented by U.S. Coast Guard immediately preceding application for watercraft registration in Arizona. The Commission also proposes to amend this rule to allow watercraft agents to accept and submit a Coast Guard Form CG-1270 or Statement of Facts form when processing a watercraft registration on behalf of the Department. In addition, the Commission also proposes to replace "letter of documentation" with "certificate of documentation" to make the rule more concise.

R12-4-510. Refunds for Renewals

The rule establishes requirements necessary to obtain a refund of a watercraft registration renewal fee and Nonresident Boating Safety Infrastructure fee, when applicable, when the watercraft owner paid the fees in error

or sold the watercraft to another person prior to renewing the registration. The Department issues approximately 70 refunds under this rule; this figure has doubled since the last rule amendment.

The rule was last amended to allow a person to obtain a refund when the watercraft was registered in error. The Commission anticipated the proposed amendments would have little or no impact on the Department or regulated community. However, this amendment resulted in an increase in refund requests for persons who pay the watercraft registration fees online one week to recreationally boat in Arizona, and then request a refund the following week by simply stating they did not mean to register their watercraft - yet. When renewing a watercraft registration online, the person is able to register their watercraft for the current registration period and be issued a 45-day temporary registration. Under A.R.S. 5-321(L), if more than twelve months have lapsed since the expiration date of the last registration or renewal, the penalty and back fees are waived. Nonresident watercraft owners have learned to "game the system" by renewing the registration for their watercraft online and then using R12-4-510(A)(3) to obtain a refund, and then registering their watercraft for the following year. Since the rule was amended in 2017, the number of claims for refunds has risen dramatically: in 2017, 48 watercraft registration refunds were issued; by 2020, 73 refunds were issued. In addition, 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, and initiates warrant corrections when necessary. If by chance a refund is returned as undeliverable, it is forwarded to the Department of Revenue to process as unclaimed property. Each refund costs the Department approximately \$3 to \$6 to process (Department employee related expenses as well as GAO/ADOR costs are not included in this estimate). The Commission proposes to remove rule language that allows a person to claim a refund by merely stating they registered a boat in error.

In addition, system edits within the Department's watercraft registration system prevents a person from registering the same watercraft a second time during the same registration period. The Commission proposes to remove rule language that allows a person to request a refund because the person erroneously paid those fees twice for the same watercraft to eliminate a requirement that is no longer necessary for the operation of state government.

R12-4-518. Regattas

The rule prescribes regulations for the issuance of permits for motor boat races, regattas, or other events, as authorized under A.R.S. § 5-311(A)(6). The Commission has elected not to exercise its authority under this statute and the U.S. Coast Guard issues permits for events held on the Colorado River under 33 C.F.R. § 100.15. The rule authorizes the Department to enforce the terms and conditions of these federal permits.

Since the last rulemaking, the Aquatic Invasive Species Article was renumbered from 11 to 9. The Commission proposes to amend the rule to reference the current Article number.

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

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

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

Not applicable

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

The Commission's intent in the proposed rulemaking is to clarify current rule language; ensure compliance with U.S. Coast Guard regulations; enable the Department to provide better customer service; and reduce regulatory and administrative burdens wherever possible.

The Commission anticipates the rulemaking will result in an overall benefit to persons regulated by the rule. The Commission anticipates the rulemaking will result in 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 the rulemaking will not require any new full-time employees. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. The Commission anticipates the Department will incur costs related to rulemaking, updating Department publications, and related training.

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:

No changes were made between the proposed rulemaking and final rulemaking.

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

The Department did not receive any public or stakeholder comments in response to the proposed rulemaking.

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:

R12-4-502, the rule complies with A.R.S. § 41-1037. The certificate of number described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

For R12-4-509, the rule complies with A.R.S. § 41-1037. The authorization described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

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:

Except for the rules listed below, federal law is not directly applicable to the subject of the rules. The rules are based on state law.

For R12-4-501, Federal regulation 33 C.F.R. 187 is applicable to the subject of the rule. 33 C.F.R. 187.303 establishes the terms a state must define in order to participate in the Vessel Identification System (VIS). The Department has determined the rule is not more stringent than the corresponding federal law.

For R12-4-502, Federal regulation 33 C.F.R. 187 is applicable to the subject of the rule. 33 C.F.R. 187 prescribes the minimum owner, vessel, and record information requirements for States electing to participate in VIS. The Department has determined the rule is not more stringent than the corresponding federal law.

For R12-4-502, Federal regulation 33 C.F.R. 174 is applicable to the subject of the rule. 33 C.F.R. 174 prescribes a standard numbering system for vessels applicable to States for approval of State numbering systems. The Department has determined the rule is not more stringent than the 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 5 BOATING AND WATER SPORTS

Section

R12-4-501. Boating and Water Sports Definitions

R12-4-502. Application for Watercraft Registration

R12-4-507.

R12-4-509. Watercraft Agents

R12-4-510. Refunds for Renewals

R12-4-518. Regattas

ARTICLE 5 BOATING AND WATER SPORTS

R12-4-501. Boating and Water Sports Definitions

In addition to the definitions provided under A.R.S. § 5-301, the following definitions apply to this Article unless otherwise specified:

“Abandoned watercraft” means any watercraft that has remained:

On private property without the consent of the private property owner;

Unattended for more than 48 hours on a highway, public street, or other public property;

Unattended for more than 72 hours on state or federal lands; or

Unattended for more than 14 days on state or federal waterways, unless in a designated mooring or anchorage area.

“Aids to navigation” means buoys, beacons, or other fixed objects placed on, in, or near the water to mark obstructions to navigation or to direct navigation through channels or on a safe course.

“Authorized third-party provider” means an entity that has been awarded a written agreement with the Department, pursuant to a competitive bid process, to perform limited or specific services on behalf of the Department.

“AZ number” means the Department-assigned identification number with the prefix “AZ.”

“Bill of sale” means a written agreement transferring ownership of a watercraft that includes all of the following information:

Name of buyer;

Name of seller;

Manufacturer of the watercraft, when known;

Hull identification number, unless exempt under R12-4-505;

Purchase price and sales tax paid, when applicable; and

Signature of seller.

“Boats keep out” in reference to a regulatory marker means the operator or user of a watercraft, or a person being towed by a watercraft on water skis, an inflatable device, or similar equipment shall not enter.

“Certificate of number” means the Department-issued document that is proof that a motorized watercraft is registered in the name of the owner.

“Certificate of origin” means a document provided by the manufacturer of a new watercraft or its distributor, its franchised new watercraft dealer, or the original purchaser establishing the initial chain of ownership for a watercraft, such as but not limited to:

Manufacturer’s certificate of origin (MCO);

Manufacturer’s statement of origin (MSO);

Importer’s certificate of origin (ICO);

Importer’s statement of origin (ISO); or

Builder’s certification (Form CG-1261).

“Controlled-use marker” means an anchored or fixed marker on the water, shore, or a bridge that controls the operation of watercraft, water skis, surfboards, or similar devices or equipment.

“Dealer” means any person who engages in whole or in part in the business of buying, selling, or exchanging new or used watercraft, or both, either outright or on conditional sale, consignment, or lease.

“Homemade watercraft” means a watercraft that is not fabricated or manufactured for resale and to which a manufacturer has not attached a hull identification number. If a watercraft is assembled from a kit or constructed from an unfinished manufactured hull and does not have a manufacturer assigned hull identification number it is a “homemade watercraft.”

“Hull identification number” means a number assigned to a specific watercraft by the manufacturer or by a government jurisdiction as prescribed by the U.S. Coast Guard.

“Issuing authority” means either a State that has an approved numbering system or the U.S. Coast Guard when a State does not have an approved numbering system.

“Junk watercraft” means any hulk, derelict, wreck, or parts of any watercraft in an unseaworthy or dilapidated condition that cannot be profitably dismantled or salvaged for parts or profitably restored.

“Letter of gift” means a document transferring ownership of a watercraft that includes all of the following information:

- Name of previous owner;
- Name of new owner;
- Manufacturer of the watercraft, when known;
- Hull identification number, unless exempt under R12-4-505;
- A statement that the watercraft is a gift; and
- Signature of previous owner.

“Livery” means a business authorized to rent or lease watercraft with or without an operator for recreational, non-commercial use as prescribed under A.R.S. § 5-371.

“Manufacturer” means any person engaged in the business of manufacturing or importing new watercraft for the purpose of sale or trade.

“Motorized watercraft” means any watercraft propelled by machinery and powered by electricity, fossil fuel, or steam.

“No ski” in reference to a regulatory marker means a person shall not be towed on water skis, an inflatable device, or similar equipment.

“No wake” in reference to a regulatory marker has the same meaning as “wakeless speed” as defined under A.R.S. § 5-301.

“Operate” in reference to a watercraft means use, navigate, or employ.

“Owner” in reference to a watercraft means a person who claims lawful possession of a watercraft by virtue of legal title or equitable interest that entitles the person to possession.

“Personal flotation device” means a U.S. Coast Guard approved wearable or throwable device for use on any watercraft, as prescribed under A.R.S. §§ 5-331, 5-350(A), and R12-4-511.

“Regatta” means an organized water event of limited duration affecting the public use of waterways, for which a lawful jurisdiction has issued a permit.

“Registered owner” means the person or persons to whom a watercraft is currently registered by any jurisdiction.

“Registration decal” means the Department-issued decal that is proof of watercraft registration.

“Regulatory marker” means a waterway marker placed on, in, or near the water to convey general information or indicate the presence of:

A danger, or

A restricted or controlled-use area.

“Release of interest” means a statement surrendering or abandoning unconditionally any claim or right of ownership or use in a watercraft.

“Secured party” means a lender, seller, or other person who holds a security interest in a watercraft under applicable law.

“Secured interest” means an interest that is reserved or created by an agreement under applicable law and that secures payment or the performance of an obligation.

“Sound level” means the noise level measured in decibels on the A-weighted scale of a sound level instrument that conforms to recognized industry standards and is maintained according to the manufacturer’s instructions.

“Staggered registration” means the system of renewing watercraft registrations in accordance with the schedule provided under R12-4-504.

“State of principal operation” means the state in whose waters the watercraft is used or will be operated most during the calendar year.

“Throwable personal flotation device” means a U.S. Coast Guard approved Type IV device for use on any watercraft such as, but not limited to, a buoyant cushion, ring buoy, or horseshoe buoy.

“Titling authority” means a State whose vessel titling system has been certified by the Commandant under 33 C.F.R. 187.303 Subpart D.

“Unreleased watercraft” means a watercraft for which there is no written release of interest from the registered owner.

“Watercraft” means a boat or other floating device of rigid or inflatable construction designed to carry people or cargo on the water and propelled by machinery, oars, paddles, or wind action on a sail. Exceptions are sea-planes, makeshift contrivances constructed of inner tubes or other floatable materials that are not propelled by machinery, personal flotation devices worn or held in hand, and other objects used as floating or swimming aids.

“Watercraft agent” means a person authorized by the Department to collect applicable fees for the registration and numbering of watercraft.

“Watercraft registration” means the validated certificate of number and validating decals issued by the Department.

“Wearable personal flotation device” means a U.S. Coast Guard approved Type I, Type II, Type III, or Type V device for use on any watercraft such as, but not limited to, an off-shore lifejacket, near-shore buoyant vest, special-use wearable device, or flotation aid.

R12-4-502. Application for Watercraft Registration

- A. Only motorized watercraft as defined under R12-4-501 are subject to watercraft registration.
- B. A person shall apply for watercraft registration under A.R.S. § 5-321 using a form furnished by the Department and available at any Department office or on the Department's website. The applicant shall provide the following information for registration of all motorized watercraft except homemade watercraft, which are addressed under subsection (C):
1. Arizona residency certification statement, signed by the watercraft owner;
 2. Type of watercraft;
 3. Propulsion type;
 4. Engine drive type;
 5. Overall length of watercraft;
 6. Make and model of watercraft, if known;
 7. Year built or model year, if known;
 8. Hull identification number;
 9. Hull material;
 10. Fuel type;
 11. Category of use;
 12. Watercraft or AZ number previously issued for the watercraft, if any;
 13. State of principal operation; and
 14. For watercraft:
 - a. Owned by a person:
 - i. Legal name;
 - ii. Mailing address;
 - iii. Date of birth; and
 - iv. Signature of each applicant.
 - b. Owned by a business:
 - i. Name of business;
 - ii. Business address;
 - iii. Tax Identification Number; and
 - iv. Signature and title of authorized representative on behalf of the business.
 - c. Held in a trust:
 - i. Name of trust;
 - ii. Primary trustee's address;
 - iii. Tax Identification Number, required when the trust is held by two or more persons;
 - iv. Date of trust; and
 - iv. Signature of each trustee, unless the trust instrument authorizes the signature of one trustee to bind

the trust.

15. When ownership of the watercraft is in more than one name, the applicant shall indicate ownership designation by use of one of the following methods:
 - a. Where ownership is joint tenancy with right of survivorship, the applicant shall use “and/or” between the names of the owners. To transfer registration of the watercraft, each owner shall provide a signature. Upon legal proof of the death or incompetency of either owner, the remaining owner may transfer registration of the watercraft.
 - b. Where ownership is a tenancy in common the applicant shall use “and” between the names of the owners. To transfer registration of the watercraft, each owner shall provide a signature. In the event of the death or incompetency of any owner, the disposition of the watercraft shall be handled through appropriate legal proceedings.
 - c. Where the ownership is joint tenancy or is community property with an express intent that either of the owners has full authority to transfer registration, the applicant shall use “or” between the names of the owners. Each owner shall sign the application for registration. To transfer registration, either owner’s signature is sufficient for transfer.
- C. The builder, owner, or owners of a homemade watercraft shall present the watercraft for inspection at a Department office. The applicant shall provide the following information for registration of homemade watercraft, using the same ownership designations specified in subsection (A)(15):
 1. Type of watercraft;
 2. Propulsion type;
 3. Engine drive type;
 4. Overall length of watercraft;
 5. Year built;
 6. Hull material;
 7. Fuel type;
 8. Category of use;
 9. Each owner’s:
 - a. Name,
 - b. Mailing address, and
 - c. Date of birth;
 10. State of principal operation;
 11. Whether the watercraft was assembled from a kit or rebuilt from a factory or manufacturer’s hull;
 12. Hull identification number, if assigned; and
 13. Signature of the applicant, acknowledged before a Notary Public or witnessed by a Department employee.
- D. As prescribed under A.R.S. § 5-321, the applicant shall submit a use tax receipt issued by the Arizona Department of Revenue with the application for registration unless any one of the following conditions apply:
 1. The applicant is exempt from use tax as provided under 15 A.A.C. Chapter 5,

2. The applicant is transferring the watercraft from another jurisdiction to Arizona without changing ownership,
 3. The applicant submits a bill of sale or receipt showing the sales or use tax was paid at the time of purchase, or
 4. The applicant submits a notarized affidavit of exemption stating that the acquisition of the watercraft was for rental or resale purposes.
- E. An applicant for a watercraft dealer registration authorized under A.R.S. § 5-322(F), shall be a business offering watercraft for sale or a watercraft manufacturer registered by the U.S. Coast Guard. A person shall display dealer registration for watercraft demonstration purposes only. For the purposes of this Section, “demonstration” means to operate a watercraft on the water for the purpose of selling, trading, negotiating, or attempting to negotiate the sale or exchange of interest in new watercraft, and includes operation by a manufacturer for purposes of testing a watercraft. Demonstration does not include operation of a watercraft for personal purposes by a dealer or manufacturer or an employee, family member, or an associate of a dealer or manufacturer. The watercraft dealer registration is subject to invalidation pursuant to R12-4-506 if a watercraft with displayed dealer registration is used for purposes other than those authorized under A.R.S. § 5-322(F) or this Section. A watercraft dealer registration applicant shall submit an application to the Department. The application is furnished by the Department and is available at any Department office. The applicant shall provide the following information on the application:
1. All business names used for the sale or manufacture of watercraft in Arizona;
 2. Mailing address and telephone number for each business for which a watercraft dealer registration is requested;
 3. Tax privilege license number;
 4. U.S. Coast Guard manufacturer identification code, when applicable;
 5. Total number of certificates of number and decals requested; and
 6. The business owner’s or manager’s:
 - a. Name,
 - b. Business address,
 - c. Telephone number, and
 - d. Signature.
- F. In addition to submitting the application form and any other information required under this Section, the applicant for watercraft registration shall submit one or more of the following additional forms of documentation:
1. Original title if the watercraft is titled in another state;
 2. Original registration if the watercraft is from a non-titling state;
 3. Bill of sale as defined under R12-4-501 if the watercraft has never been registered or titled in any state;
 4. Letter of gift as defined under R12-4-501 if the watercraft was received as a gift and was never registered or titled in any state;
 5. Court order or other legal documentation establishing lawful transfer of ownership;
 6. ~~Letter Certificate of documentation or letter of deletion, required when the watercraft was previously~~

~~documented~~ issued by the U.S. Coast Guard;

7. Statement of facts form furnished by the Department and available from any Department office when none of the documentation identified under subsections (F)(1) through (F)(6) exists either in the possession of the watercraft owner or in the records of any jurisdiction responsible for registering or titling watercraft. An applicant for watercraft registration under a statement of facts shall present the watercraft for inspection at a Department office. The statement of facts form shall include the following information:
 - a. Hull identification number,
 - b. Certification that the watercraft meets one of the following conditions:
 - i. The watercraft was manufactured prior to 1972, is 12 feet in length or less, and is not propelled by an inboard engine;
 - ii. The watercraft is owned by the applicant and has never been registered or titled;
 - iii. The watercraft was owned in a state that required registration, but was never registered or titled; or
 - iv. The watercraft was purchased, received as a gift, or received as a trade and has not been registered, titled, or otherwise documented in the past five years.
 - c. Signature of the applicant, acknowledged before a Notary Public or witnessed by a Department employee.
8. An original certificate of origin when all of the following conditions apply:
 - a. The watercraft was purchased as new,
 - b. The applicant is applying for watercraft registration within a year of purchasing the watercraft, and
 - c. The certificate of origin is not held by a lien holder.
- G.** If the watercraft is being transferred to a person other than the original listed owner, the applicant for a watercraft registration shall submit a release of interest. The Department may require the applicant to provide a release of interest that is acknowledged before a Notary Public or witnessed by a Department employee when the Department is unable to verify the signature on the release of interest.
- H.** If the original title is held by a lien holder, the applicant for a watercraft registration shall submit a form furnished by the Department and available from any Department office along with a copy of the title. The applicant shall comply with the following requirements when submitting the form:
 1. The applicant shall provide the following information on the form:
 - a. Applicant's name,
 - b. Applicant's mailing address,
 - c. Make and model of watercraft, and
 - d. Watercraft hull identification number.
 2. The applicant shall ensure the lien holder provides the following information on the form:
 - a. Lien holder's name,
 - b. Lien holder's mailing address,
 - c. Name of person completing the form on behalf of the lien holder,
 - d. Title of person completing the form on behalf of the lien holder, and

- e. Signature of the person completing the form on behalf of the lien holder, acknowledged before a Notary Public or witnessed by a Department employee.
- I. If the watercraft's original title or registration is lost, the Department shall register a watercraft upon receipt of one of the following:
 - 1. A letter or printout from any jurisdiction responsible for registering or titling watercraft that verifies the owner of record for that specific watercraft;
 - 2. A printout of the Vessel Identification System for that specific watercraft from the U.S. Coast Guard and verification from the appropriate state agency that the information regarding the owner of record for that specific watercraft is correct and current;
 - 3. A statement of facts by the applicant as described under subsection (F)(7) if the watercraft has not been registered, titled, or otherwise documented in the past five years; or
 - 4. The abandoned or unreleased watercraft approval letter issued by the Department, as established under R12-4-507(I).
- J. The Department shall issue a watercraft registration within 30 calendar days of receiving a valid application and the documentation required under this Section from the applicant or a watercraft agent authorized under R12-4-509.
- K. All watercraft registrations and supporting documentation are subject to verification by the Department and to the requirements established under R12-4-505. The Department shall require a watercraft to be presented for inspection to verify the information provided by an applicant if the Department has reason to believe the information provided by the applicant is inaccurate or the applicant is unable to provide the required information.
- L. The Department shall deem an application invalid if the Department receives legal documentation of any legal action that may affect ownership of that watercraft.
- M. The Department shall invalidate a watercraft registration if the registration is obtained by an applicant who makes a false statement or provides false information on any application, statement of facts, or written instrument submitted to the Department.

R12-4-507. Transfer of Ownership of an Abandoned or Unreleased Watercraft

- A. A person who has knowledge and custody of a watercraft abandoned on private property owned by that person may attempt to obtain ownership of the watercraft by way of the abandoned watercraft transfer process. A lienholder of foreclosed real property may assign an agent to act on its behalf.
- B. The last registered owner of an abandoned or unreleased watercraft is presumed to be responsible for the watercraft, unless the watercraft is reported stolen.
- C. The operator of a self-storage facility located in this state and having a possessory lien shall comply with the requirements prescribed under A.R.S. Title 33, Chapter 15, Article 1 when attempting to obtain ownership of a watercraft abandoned while in storage.
- D. A person having a possessory lien under a written agreement shall comply with the requirements prescribed under A.R.S. Title 33, Chapter 7, Article 6 when attempting to obtain ownership of a watercraft for which repairs or

service fees remain unpaid.

- E. Only a person acting within the scope of official duties as an employee or authorized agent of a government agency may order the removal of a watercraft abandoned on public property or a public waterway.
- F. A person seeking ownership of an abandoned or unreleased watercraft shall submit an application to the Department and pay the fee established under R12-4-504. The application is furnished by the Department and available at any Department office. The application shall include the following information, if available:
 - 1. Hull identification number, unless exempt under R12-4-505;
 - 2. Registration number;
 - 3. Decal number;
 - 4. State of registration;
 - 5. Year of registration;
 - 6. Name, address, and daytime telephone number of the person who found the watercraft;
 - 7. For abandoned watercraft:
 - a. Address or description of the location where the watercraft was found,
 - b. Whether the watercraft was abandoned on private or public property, and
 - c. When applicable, for watercraft abandoned on private property, whether the applicant is the legal owner of the property;
 - 8. Condition of the watercraft: wrecked, stripped, or intact;
 - 9. State in which the watercraft will be operated;
 - 10. Length of time the watercraft was abandoned;
 - 11. Reason why the applicant believes the watercraft is abandoned; and
 - 12. Signature of the applicant, acknowledged before a Notary Public or witnessed by a Department employee.
- G. This state and its agencies, employees, and agents are not liable for relying in good faith on the contents of the application.
- H. The Department shall attempt to determine the name and address of the registered owner by:
 - 1. Conducting a search of its watercraft database when documentation indicates the watercraft was previously registered in this state, or
 - 2. Requesting the watercraft record from the other state when documentation indicates the watercraft was previously registered in another state.
- I. If the Department is able to determine the name and address of the registered owner, the Department shall send written notice of the applicant's attempt to register the watercraft to the owner ~~by certified mail, return receipt requested.~~
 - 1. ~~If service is successful or upon receipt of a response from the registered owner, the Department shall send the following written notification to the applicant, as appropriate:~~
 - a. If the registered owner provides a written release of interest in the watercraft, the Department shall mail the release of interest and an abandoned or unreleased watercraft approval letter to the applicant. The applicant shall apply for watercraft registration in compliance with the requirements established under

R12-4-502.

- b. If the registered owner provides written notice to the Department refusing to release interest in the watercraft, the Department shall notify the applicant of the owner's refusal. The Department shall not register the watercraft to the applicant unless the applicant provides proof of ownership and complies with the requirements established under R12-4-502.
 - c. ~~If the registered owner does not respond to the notice in writing within 30 days from the date of receipt, the Department shall notify the applicant of the owner's failure to respond. The Department shall not register the watercraft to the applicant unless the applicant provides proof of ownership and complies with the requirements established under R12-4-502.~~
 - d. If the registered owner does not respond to the notice within 180 days from the date of receipt of the Department sent notice, this failure to act shall constitute a waiver of interest in the watercraft by any person having an interest in the watercraft, and the watercraft shall be deemed abandoned for all purposes. The Department shall mail an abandoned or unreleased watercraft approval letter to the applicant. The applicant shall apply for watercraft registration in compliance with the requirements established under R12-4-502.
2. If the written notice is returned unclaimed or refused, the Department shall notify the applicant within 15 days of the notice being returned that the attempt to contact the registered owner was unsuccessful.
- J.** If the Department is unable to identify or serve the registered owner, the Department shall post a notice of intent on the Department's website within 45 days of the Department's notification to the applicant as provided in subsection (I)(2).
1. The notice shall include a statement of the Department's intent to transfer ownership of the watercraft ten days after the date of posting, unless the Department receives notice from the registered owner refusing to release interest in the watercraft within that ten-day period following posting.
 2. If the watercraft remains unclaimed after the ten-day period, the Department shall mail an abandoned or unreleased watercraft approval letter to the applicant. The applicant shall apply for watercraft registration in compliance with the requirements established under R12-4-502.
- K.** A government agency may submit an application for authorization to dispose of a junk watercraft abandoned on state or federal lands or waterways. The application is furnished by the Department and is available at any Department Office. Upon receipt of the application, the Department shall attempt to determine the name and address of the registered owner. If the Department is unable to identify and serve the registered owner, the Department shall publish a notice of intent to authorize the disposal of the junk watercraft as described under subsection (J).
1. The published notice shall include a statement of the Department's intent to authorize the disposal of the watercraft ten days after the date of publication, unless the Department receives notice from the registered owner refusing to release interest in the watercraft within that ten-day period following publication.
 2. If the watercraft remains unclaimed after the ten-day period, the Department shall mail an authorization to dispose of the junk watercraft to the government agency. The government agency may dispose of the

abandoned watercraft and all indicia for that watercraft in any manner the agency determines expedient or convenient.

R12-4-509. Watercraft Dealers; Agents

- A.** The Department may authorize a watercraft dealer to act as an agent on behalf of the Department for the purpose of issuing temporary certificates of number valid for 45 days for new or used watercraft, provided:
 - 1. The applicant's previous authority to act as a watercraft agent under A.R.S. § 5-321(I) has not been canceled by the Department within the preceding 24 months, and
 - 2. The applicant is a business located and operating within this state and sells watercraft.
- B.** An applicant seeking watercraft agent authorization shall submit an application to the Department. The application is furnished by the Department and available at the Arizona Game and Fish Department, 5000 W. Carefree Highway, Phoenix, AZ 85086. The applicant shall provide the following information on the application:
 - 1. Principal business or corporation name, address, and telephone number or if not a corporation, the full name, address, and telephone number of all owners or partners;
 - 2. Name, address, and telephone number of the owner or manager responsible for compliance with this Section;
 - 3. Whether the applicant has previously issued temporary certificates of number under A.R.S. § 5-321(I);
 - 4. All of the following information specific to the location from which new watercraft are to be sold and temporary certificates of number issued:
 - a. Name of owner or manager;
 - b. Business hours;
 - c. Business telephone number;
 - d. Business type;
 - e. Storefront name; and
 - f. Street address;
 - 5. Manufacturers of the watercraft to be sold; and
 - 6. Signature of person named under subsection (B)(2).
- C.** The Department shall either approve or deny the application within the licensing time-frame established under R12-4-106.
- D.** Authorization to act as a watercraft agent is specific to the dealer's business location designated on the application and approved by the Department, unless the dealer is participating in a boat show for the purpose of selling watercraft.
- E.** The watercraft agent shall:
 - 1. Use the assigned watercraft agent number when issuing a temporary certificate of number,
 - 2. Use the online application system and forms supplied by the Department; and
 - 3. Collect the appropriate fee as prescribed under R12-4-504 and R12-4-527.
- F.** A watercraft agent is prohibited from issuing a temporary certificate of number for a watercraft when:
 - 1. The watercraft is involved in legal proceedings such as, but not limited to, a marital dissolution, probate, or

- bankruptcy proceeding;
 - 2. The watercraft is abandoned or unreleased;
 - 3. The watercraft is homemade; or
 - 4. The watercraft has a nonconforming HIN.
- G.** A watercraft agent issuing a temporary certificate of number to the purchaser of a watercraft shall comply with all the following:
- 1. The watercraft agent shall obtain a completed application that complies with the requirements established under R12-4-502.
 - 2. The watercraft agent shall identify to the applicant the state registration fee and the nonresident boating safety infrastructure fee, when applicable, separately from any other costs.
 - 3. The fees collected under subsection (E)(3) shall be submitted electronically to the Department prior to the submission of the documentation required under subsection (G)(4).
 - 4. Within five business days of issuing a temporary certificate of number, a watercraft agent shall deliver or mail the following documentation to the Arizona Game and Fish Department, Watercraft Agent Representative, 5000 W. Carefree Highway, Phoenix, AZ 85086:
 - a. For a new watercraft:
 - i. Original application;
 - ii. Original or copy of the bill of sale issued by the watercraft agent; and
 - iii. Original certificate of origin;
 - b. For a used watercraft:
 - i. Original application;
 - ii. Original or copy of the bill of sale issued by the watercraft agent;
 - iii. Ownership document, such as but not limited to a title, bill of sale, letter of gift or U.S. Coast Guard ~~letter certificate of documentation or letter of deletion when the watercraft was previously documented~~ issued by the U.S. Coast Guard; and
 - iv. Lien release, when applicable.
- H.** The Department may cancel the watercraft agent's authorization if the agent does any one of the following:
- 1. Fails to comply with the requirements established under this Article;
 - 2. Submits more than one electronic payment dishonored because of insufficient funds, payments stopped, or closed accounts to the Department within a calendar year;
 - 3. Predates, postdates, alters, or provides or knowingly allows false information to be provided on an application for a temporary certificate of number; or
 - 4. Falsifies the application for authorization as a watercraft agent.
- I.** The Department shall provide a written notice to the person stating the reason for the denial or cancellation of watercraft agent status, as applicable. The person may appeal the denial or cancellation to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.

R12-4-510. Refund of Fees Paid in Error

- A. The Department shall issue a refund for watercraft registration fees paid and, when applicable, the Nonresident Boating Safety Infrastructure fee when:
1. ~~The registered owner has erroneously paid those fees twice for the same watercraft;~~
 2. ~~The the~~ registered owner has erroneously paid those fees for a watercraft that has already been sold to another individual; ~~or~~
 3. ~~The registered owner registered the watercraft in error.~~
- B. To request a refund of fees paid in error, the person applying for the refund shall surrender all of the following to the Department:
1. Original certificate of number;
 2. Registration decals; and
 3. Nonresident Boating Safety Infrastructure Decal, when applicable.
- C. A person requesting a refund of fees shall submit the request to the Department within 30 calendar days of the date the payment was received by the Department.
- D. The Department shall not refund:
1. A late registration penalty fee.
 2. A fee collected by an authorized third-party provider. A person who paid their watercraft registration fee to a third-party provider shall request a refund of fees from that third-party provider.

R12-4-518. Regattas

- A. When a regatta permit is issued by the Coast Guard, the person in control of the regatta shall at all times be responsible for compliance with the stipulations as prescribed within the regatta permit. Such stipulations may include but not be limited to:
1. A specified number of patrol or committee boats and identified as such.
 2. Availability of emergency medical services.
 3. Spectator control if there exists a danger that life or property is in jeopardy.
- B. Non-compliance with any stipulation of an authorized permit which jeopardizes the public welfare shall be cause to terminate the regatta until the person in control or a person designated by the one in control satisfactorily restores compliance.
- C. When a regatta applicant is informed in writing by the Coast Guard that a permit is not required, such regatta may take place, but shall not relieve the regatta sponsor of any responsibility for the public welfare or confer any exemption from state boating and watersports laws and rules.
- D. The regatta sponsor and all participants shall comply with aquatic invasive species requirements established under A.R.S Title 17, Chapter 2, Article 3.1 and 12 A.A.C. 4, Article ~~449~~.

TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
R12-4-501, R12-4-502, R12-4-509, R12-4-510, AND R12-4-518
ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

A. The economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking:

The Arizona Game and Fish Commission proposes to amend rules within Article 5 addressing boating and water sports to enact amendments developed during the preceding Five-year Review Report, approved by the Commission in February 2021 and the Governor's Regulatory Review Council in July 7, 2021. The proposed amendments are designed to clarify current rule language; ensure compliance with U.S. Coast Guard regulations; enable the Department to provide better customer service; and reduce regulatory and administrative burdens wherever possible.

An exemption from Executive Order 2021-02 was provided for this rulemaking by Buchanan Davis, Natural Resource Policy Advisor, Governor's Office, in an email dated September 8, 2021.

R12-4-501. Boating and Water Sports Definitions.

The rule establishes definitions that assist the regulated community and the public in understanding the unique terms used throughout 12 A.A.C. Chapter 4, Article 5.

U.S. Coast Guard regulation, 33 C.F.R. 187.303, establishes the terms each state must define in order to participate in the Vessel Identification System (VIS). Participating in VIS is beneficial to the citizens of Arizona because VIS is a nationwide system that collects information on vessels and vessel ownership to help identify and recover stolen vessels, deter vessel theft, and assist in deterring and discovering security-interest and insurance fraud. Since the last rulemaking, 33 C.F.R. 187.303 was amended to require state agencies to also define: "issuing authority," "secured party," "secured interest," and "titling authority." The Commission proposes to amend the rule to define the following terms: "issuing authority," "secured party," "secured interest," and "titling authority" to ensure compliance with the regulation.

R12-4-502. Application for Watercraft Registration

The rule establishes watercraft registration application requirements. The rule was adopted to ensure the Department provides and maintains the necessary information required under 33 C.F.R. 187 Vessel Identification System (VIS), which prescribes the owner and vessel information requirements for states electing to participate in VIS.

The rule requires an applicant for watercraft registration to submit one or more additional forms of documentation necessary to identify a specific watercraft and establish ownership. When the owner of a watercraft that was previously documented by the U.S. Coast Guard is now applying for registration in Arizona, the watercraft owner must submit a U.S. Coast Guard Letter of Deletion. The U.S. Coast Guard charges \$125 for this form. Currently, the National Vessel Documentation Center (NVDC) is experiencing delays in the time necessary to issue letters of deletion due to performance issues associated with its

Information Technology (IT) System. This delay has resulted in the watercraft owner's inability to provide the documentation required to register the watercraft in Arizona. In an effort to provide better customer service, and after reviewing applicable statutes and rules and consulting with U.S. Coast Guard, the Commission proposes to amend the rule to allow a customer to submit the U.S. Coast Guard Form CG-1270 or Statement of Facts form when the watercraft was documented by U.S. Coast Guard immediately preceding application for watercraft registration in Arizona. In addition, the Commission also proposes to replace "letter of documentation" with "certificate of documentation" to make the rule more concise.

R12-4-509. Watercraft Agents

The rule establishes watercraft agent application requirements and the authorization process for a dealer seeking to issue a 45-day temporary certificate of number upon the sale of a watercraft. The rule requires a watercraft agent to submit documentation necessary to identify a specific watercraft and establish ownership to the Department for record retention and quality assurance purposes. With this rulemaking, the Commission proposes to amend R12-4-502 to allow a customer to submit the U.S. Coast Guard Form CG-1270 or Statement of Facts form for watercraft documented by U.S. Coast Guard immediately preceding application for watercraft registration in Arizona. The Commission also proposes to amend this rule to allow watercraft agents to accept and submit a Coast Guard Form CG-1270 or Statement of Facts form when processing a watercraft registration on behalf of the Department. In addition, the Commission also proposes to replace "letter of documentation" with "certificate of documentation" to make the rule more concise.

R12-4-507. Transfer of Ownership of an Abandoned or Unreleased Watercraft

The rule establishes requirements for transferring ownership of an unreleased or abandoned watercraft. Under R12-4-501, "abandoned watercraft" is any watercraft that has remained: on private property without the consent of the owner; unattended for more than 48 hours on a highway, public street, or other public property; unattended for more than 72 hours on state or federal lands or on public waterways unless in a designated moorage or anchorage area. Abandoned watercraft are unsightly, pose potential threats to navigation and to the environment through the discharge of oil and other pollutants. Under R12-4-501, "unreleased watercraft" means a watercraft for which there is no written release of interest from the registered owner. This occurs when a person sells a watercraft without proper documentation, such as when a watercraft is sold and the new owner never registers it. The rule provides the regulated community with an efficient manner in which to properly dispose of abandoned/unreleased watercraft that includes: determination of abandonment; determination of ownership; a notice of intent to sell/waiver of rights process with an appropriate waiting period, determination of disposition, and transfer of ownership, when warranted. If the Department finds a person who has a lawful interest in the watercraft, the abandoned watercraft process is terminated.

R12-4-510. Refunds for Renewals

The rule establishes requirements necessary to obtain a refund of a watercraft registration renewal fee and Nonresident Boating Safety Infrastructure fee, when applicable, when the watercraft owner paid the fees in error or sold the watercraft to another person prior to renewing the registration. The Department issues approximately 70 refunds under this rule; this figure has doubled since the last rule amendment.

The rule was last amended to allow a person to obtain a refund when the watercraft was registered in error. The Commission anticipated the proposed amendments would have little or no impact on the Department or regulated community. However, this amendment resulted in an increase in refund requests for persons who pay the watercraft registration fees online one week to recreationally boat in Arizona, and then request a refund the following week by simply stating they did not mean to register their watercraft - yet. When renewing a watercraft registration online, the person is able to register their watercraft for the current registration period and be issued a 45-day temporary registration. Under A.R.S. 5-321(L), if more than twelve months have lapsed since the expiration date of the last registration or renewal, the penalty and back fees are waived. Nonresident watercraft owners have learned to "game the system" by renewing the registration for their watercraft online and then using R12-4-510(A)(3) to obtain a refund, and then registering their watercraft for the following year. Since the rule was amended in 2017, the number of claims for refunds has risen dramatically: in 2017, 48 watercraft registration refunds were issued; by 2020, 73 refunds were issued. In addition, 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, and initiates warrant corrections when necessary. If by chance a refund is returned as undeliverable, it is forwarded to the Department of Revenue to process as unclaimed property. Each refund costs the Department approximately \$3 to \$6 to process (Department employee related expenses as well as GAO/ADOR costs are not included in this estimate). The Commission proposes to remove rule language that allows a person to claim a refund by merely stating they registered a boat in error.

In addition, system edits within the Department's watercraft registration system prevents a person from registering the same watercraft a second time during the same registration period. The Commission proposes to remove rule language that allows a person to request a refund because the person erroneously paid those fees twice for the same watercraft to eliminate a requirement that is no longer necessary for the operation of state government.

R12-4-518. Regattas

The rule prescribes regulations for the issuance of permits for motor boat races, regattas, or other events, as authorized under A.R.S. § 5-311(A)(6). The Commission has elected not to exercise its authority under this statute and the U.S. Coast Guard issues permits for events held on the Colorado River under 33 C.F.R. § 100.15. The rule authorizes the Department to enforce the terms and conditions of these federal permits.

Since the last rulemaking, the Aquatic Invasive Species Article was renumbered from 11 to 9. The Commission proposes to amend the rule to reference the current Article number.

(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 impact on persons regulated by the rule. Therefore, this subsection will address only those rules that are deemed to have an impact on persons regulated by the rule.

R12-4-502. Application for Watercraft Registration and R12-4-509. Watercraft Agents

Annually, the Department processes approximately 20 watercraft registration transactions involving watercraft documented by U.S. Coast Guard immediately preceding application for watercraft registration in Arizona.

R12-4-510. Refunds for Renewals

Annually, the Department processes approximately 70 refunds for watercraft registration renewals, which is almost double the amount of refunds typically processed each year prior to the 2017 rulemaking.

(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 impact on persons regulated by the rule. Therefore, this subsection will address only those rules that are deemed to have an impact on persons regulated by the rule.

R12-4-502. Application for Watercraft Registration and R12-4-509. Watercraft Agents

Persons seeking to register a watercraft documented by U.S. Coast Guard immediately preceding application for watercraft registration in Arizona will continue to pay \$125 for the letter of deletion and will wait up to four months before being able to register and legally operate their watercraft in Arizona.

R12-4-510. Refunds for Renewals

The Department will continue to expend resources administering fraudulent refund requests.

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

Overall, the Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no impact on persons regulated by the rule. Therefore, this subsection will address only those rules that are deemed to have an impact on persons regulated by the rule.

R12-4-502. Application for Watercraft Registration and R12-4-509. Watercraft Agents

The Commission anticipates the frequency of transactions involving watercraft documented by U.S. Coast Guard immediately preceding application for watercraft registration in Arizona will remain static, however, the customer will benefit from the cost savings and improved customer service resulting from the proposed amendment.

R12-4-510. Refunds for Renewals

The Commission anticipates the frequency of refund requests for watercraft registrations renewed in error will gradually decrease with each passing year after the effective date of the rule.

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

The Commission's intent in the proposed rulemaking is to clarify current rule language; ensure compliance with U.S. Coast Guard regulations; enable the Department to provide better customer service; and reduce regulatory and administrative burdens wherever possible.

The Commission anticipates the rulemaking will result in an overall benefit to persons regulated by the rule. The Commission anticipates the rulemaking will result in 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 the rulemaking will not require any new full-time employees. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. The Commission anticipates the Department will incur costs related to rulemaking, updating Department publications, and related training.

Therefore, the Commission has determined that the benefits of the rulemaking outweigh any costs.

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: Celeste Cook, Director's Office Policy and Rules Manager

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

Telephone: (623) 236-7390

E-mail: CCook@azgfd.gov

B. Economic, small business and consumer impact statement shall include:

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:

The Commission anticipates the following persons will benefit from the proposed rulemaking:

Watercraft owners will benefit from the time and cost savings from being able to use a letter of documentation to register their watercraft in Arizona.

Watercraft agents will benefit from being able to process transactions that involve watercraft currently documented by the U.S. Coast Guard.

The Department will benefit from increased customer service satisfaction.

The Commission anticipates the following persons will bear the costs of the proposed rulemaking:

The Department will bear the costs associated with the rulemaking.

The Department will bear the costs associated with implementing the proposed rule amendments, such as updating publications and manuals; providing training to Department employees, third-party providers and watercraft agents; etc.

3. Cost benefit analysis:

Cost-revenue scale. Annual costs or revenues are defined as follows:

Minimal	less than \$1,000
Moderate	\$1,000 to \$9,999
Substantial	\$10,000 or more

(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 Commission anticipates the Department will incur substantial costs to implement the rulemaking, such as communications updates (e.g., forms, publications, brochures, webpages), Department employee, third-party provider, and watercraft agent training, public outreach, etc.

The Commission anticipates the Department will benefit by increasing customer service satisfaction, and reducing costs associated with fraudulent refunds.

The Commission has determined the Department will not require additional full-time employees to implement and enforce the proposed rules.

(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 rulemaking will not have a significant impact, if any, 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.

The Commission anticipates the proposed rulemaking will not have a significant impact, if any, on businesses directly affected by the proposed rulemaking.

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.

The Commission anticipates the proposed rulemaking will have no substantial impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking. The Commission anticipates persons directly affected by the rule will not incur any additional costs as a result of the rulemaking.

5. Statement of the probable impact of the proposed rulemaking on small businesses:

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

Small businesses that are authorized to register new and/or used watercraft on behalf of the Department.

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

The Commission anticipates the proposed rulemaking will not create additional costs for compliance.

(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 rulemaking does not place any additional 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 allowing them to submit a letter of documentation for a watercraft that was documented by U.S. Coast Guard immediately preceding application for watercraft registration in Arizona. The proposed change would result in a cost savings of \$125 and a time savings of approximately 4 months for each watercraft owner affected by the proposed rulemaking.

6. Statement of the probable effect on state revenues.

The proposed rulemaking will not significantly impact state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The Commission has determined that there are no alternative methods of achieving the objectives of the proposed rulemaking. The Commission holds that the benefits of the proposed rulemaking outweigh any costs.

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 and observations, which included comments from the public and agency staff who administer and enforce the rules included in this rulemaking. Additionally, the Commission relied on historical data (i.e., Department reports to include sportsman/watercraft data, violation data, etc., other state agency rules, etc.), current processes, and the Department's overall mission. The subject the rules address are based on statutory requirements rather than natural sciences, thus recommendations relied more heavily on empirical qualitative data using agency experience and observations instead of quantitative 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 this rulemaking. In its review, the team considered all comments from the public and agency staff that administer and enforce the rules, historical data, current processes and environment, and the Department's overall mission. 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 Department's goals and 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 5. BOATING AND WATER SPORTS

R12-4-501. Boating and Water Sports Definitions

In addition to the definitions provided under A.R.S. § 5-301, the following definitions apply to this Article unless otherwise specified:

“Abandoned watercraft” means any watercraft that has remained:

On private property without the consent of the private property owner;

Unattended for more than 48 hours on a highway, public street, or other public property;

Unattended for more than 72 hours on state or federal lands; or

Unattended for more than 14 days on state or federal waterways, unless in a designated mooring or anchorage area.

“Aids to navigation” means buoys, beacons, or other fixed objects placed on, in, or near the water to mark obstructions to navigation or to direct navigation through channels or on a safe course.

“Authorized third-party provider” means an entity that has been awarded a written agreement with the Department, pursuant to a competitive bid process, to perform limited or specific services on behalf of the Department.

“AZ number” means the Department-assigned identification number with the prefix “AZ.”

“Bill of sale” means a written agreement transferring ownership of a watercraft that includes all of the following information:

Name of buyer;

Name of seller;

Manufacturer of the watercraft, when known;

Hull identification number, unless exempt under R12-4-505;

Purchase price and sales tax paid, when applicable; and

Signature of seller.

“Boats keep out” in reference to a regulatory marker means the operator or user of a watercraft, or a person being towed by a watercraft on water skis, an inflatable device, or similar equipment shall not enter.

“Certificate of number” means the Department-issued document that is proof that a motorized watercraft is registered in the name of the owner.

“Certificate of origin” means a document provided by the manufacturer of a new watercraft or its distributor, its franchised new watercraft dealer, or the original purchaser establishing the initial chain of ownership for a watercraft, such as but not limited to:

Manufacturer’s certificate of origin (MCO);

Manufacturer’s statement of origin (MSO);

Importer’s certificate of origin (ICO);

Importer’s statement of origin (ISO); or

Builder’s certification (Form CG-1261).

“Controlled-use marker” means an anchored or fixed marker on the water, shore, or a bridge that controls the operation of watercraft, water skis, surfboards, or similar devices or equipment.

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“Dealer” means any person who engages in whole or in part in the business of buying, selling, or exchanging new or used watercraft, or both, either outright or on conditional sale, consignment, or lease.

“Homemade watercraft” means a watercraft that is not fabricated or manufactured for resale and to which a manufacturer has not attached a hull identification number. If a watercraft is assembled from a kit or constructed from an unfinished manufactured hull and does not have a manufacturer assigned hull identification number it is a “homemade watercraft.”

“Hull identification number” means a number assigned to a specific watercraft by the manufacturer or by a government jurisdiction as prescribed by the U.S. Coast Guard.

“Issuing authority” means either a State that has an approved numbering system or the Coast Guard in a State that does not have an approved numbering system.

“Junk watercraft” means any hulk, derelict, wreck, or parts of any watercraft in an unseaworthy or dilapidated condition that cannot be profitably dismantled or salvaged for parts or profitably restored.

“Letter of gift” means a document transferring ownership of a watercraft that includes all of the following information:

- Name of previous owner;
- Name of new owner;
- Manufacturer of the watercraft, when known;
- Hull identification number, unless exempt under R12-4-505;
- A statement that the watercraft is a gift; and
- Signature of previous owner.

“Livery” means a business authorized to rent or lease watercraft with or without an operator for recreational, non-commercial use as prescribed under A.R.S. § 5-371.

“Manufacturer” means any person engaged in the business of manufacturing or importing new watercraft for the purpose of sale or trade.

“Motorized watercraft” means any watercraft propelled by machinery and powered by electricity, fossil fuel, or steam.

“No ski” in reference to a regulatory marker means a person shall not be towed on water skis, an inflatable device, or similar equipment.

“No wake” in reference to a regulatory marker has the same meaning as “wakeless speed” as defined under A.R.S. § 5-301.

“Operate” in reference to a watercraft means use, navigate, or employ.

“Owner” in reference to a watercraft means a person who claims lawful possession of a watercraft by virtue of legal title or equitable interest that entitles the person to possession.

“Personal flotation device” means a U.S. Coast Guard approved wearable or throwable device for use on any watercraft, as prescribed under A.R.S. §§ 5-331, 5-350(A), and R12-4-511.

“Regatta” means an organized water event of limited duration affecting the public use of waterways, for which a lawful jurisdiction has issued a permit.

ARTICLE 5. BOATING AND WATER SPORTS

“Registered owner” means the person or persons to whom a watercraft is currently registered by any jurisdiction.

“Registration decal” means the Department-issued decal that is proof of watercraft registration.

“Regulatory marker” means a waterway marker placed on, in, or near the water to convey general information or indicate the presence of:

A danger, or

A restricted or controlled-use area.

“Release of interest” means a statement surrendering or abandoning unconditionally any claim or right of ownership or use in a watercraft.

“Secured party” means a lender, seller, or other person in whose favor there is a security interest under applicable law.

“Secured interest” means an interest that is reserved or created by an agreement under applicable law and that secures payment or performance of an obligation.

“Sound level” means the noise level measured in decibels on the A-weighted scale of a sound level instrument that conforms to recognized industry standards and is maintained according to the manufacturer’s instructions.

“Staggered registration” means the system of renewing watercraft registrations in accordance with the schedule provided under R12-4-504.

“State of principal operation” means the state in whose waters the watercraft is used or will be operated most during the calendar year.

“Throwable personal flotation device” means a U.S. Coast Guard approved Type IV device for use on any watercraft such as, but not limited to, a buoyant cushion, ring buoy, or horseshoe buoy.

“Titling authority means a State whose vessel titling system has been certified by the Commandant under subpart D of this part.

“Unreleased watercraft” means a watercraft for which there is no written release of interest from the registered owner.

“Watercraft” means a boat or other floating device of rigid or inflatable construction designed to carry people or cargo on the water and propelled by machinery, oars, paddles, or wind action on a sail. Exceptions are sea-planes, makeshift contrivances constructed of inner tubes or other floatable materials that are not propelled by machinery, personal flotation devices worn or held in hand, and other objects used as floating or swimming aids.

“Watercraft agent” means a person authorized by the Department to collect applicable fees for the registration and numbering of watercraft.

“Watercraft registration” means the validated certificate of number and validating decals issued by the Department.

“Wearable personal flotation device” means a U.S. Coast Guard approved Type I, Type II, Type III, or Type V device for use on any watercraft such as, but not limited to, an off-shore lifejacket, near-shore buoyant vest, special-use wearable device, or flotation aid.

Historical Note

ARTICLE 5. BOATING AND WATER SPORTS

Editorial correction subsection (A) (Supp. 78-5). Former Section R12-4-83 renumbered as Section R12-4-501 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-501 renumbered to R12-4-515, new Section R12-4-501 adopted effective May 27, 1992 (Supp. 92-2). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-502. Application for Watercraft Registration

- A.** Only motorized watercraft as defined under R12-4-501 are subject to watercraft registration.
- B.** A person shall apply for watercraft registration under A.R.S. § 5-321 using a form furnished by the Department and available at any Department office or on the Department's website. The applicant shall provide the following information for registration of all motorized watercraft except homemade watercraft, which are addressed under subsection (C):
1. Arizona residency certification statement, signed by the watercraft owner;
 2. Type of watercraft;
 3. Propulsion type;
 4. Engine drive type;
 5. Overall length of watercraft;
 6. Make and model of watercraft, if known;
 7. Year built or model year, if known;
 8. Hull identification number;
 9. Hull material;
 10. Fuel type;
 11. Category of use;
 12. Watercraft or AZ number previously issued for the watercraft, if any;
 13. State of principal operation; and
 14. For watercraft:
 - a. Owned by a person:
 - i. Legal name;
 - ii. Mailing address;
 - iii. Date of birth; and
 - iv. Signature of each applicant.
 - b. Owned by a business:
 - i. Name of business;
 - ii. Business address;
 - iii. Tax Identification Number; and

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- iv. Signature and title of authorized representative on behalf of the business.
 - c. Held in a trust:
 - i. Name of trust;
 - ii. Primary trustee's address;
 - iii. Tax Identification Number, required when the trust is held by two or more persons;
 - iv. Date of trust; and
 - iv. Signature of each trustee, unless the trust instrument authorizes the signature of one trustee to bind the trust.
- 15. When ownership of the watercraft is in more than one name, the applicant shall indicate ownership designation by use of one of the following methods:
 - a. Where ownership is joint tenancy with right of survivorship, the applicant shall use "and/or" between the names of the owners. To transfer registration of the watercraft, each owner shall provide a signature. Upon legal proof of the death or incompetency of either owner, the remaining owner may transfer registration of the watercraft.
 - b. Where ownership is a tenancy in common the applicant shall use "and" between the names of the owners. To transfer registration of the watercraft, each owner shall provide a signature. In the event of the death or incompetency of any owner, the disposition of the watercraft shall be handled through appropriate legal proceedings.
 - c. Where the ownership is joint tenancy or is community property with an express intent that either of the owners has full authority to transfer registration, the applicant shall use "or" between the names of the owners. Each owner shall sign the application for registration. To transfer registration, either owner's signature is sufficient for transfer.
- C. The builder, owner, or owners of a homemade watercraft shall present the watercraft for inspection at a Department office. The applicant shall provide the following information for registration of homemade watercraft, using the same ownership designations specified in subsection (A)(15):
 - 1. Type of watercraft;
 - 2. Propulsion type;
 - 3. Engine drive type;
 - 4. Overall length of watercraft;
 - 5. Year built;
 - 6. Hull material;
 - 7. Fuel type;
 - 8. Category of use;
 - 9. Each owner's:
 - a. Name,
 - b. Mailing address, and
 - c. Date of birth;

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10. State of principal operation;
 11. Whether the watercraft was assembled from a kit or rebuilt from a factory or manufacturer's hull;
 12. Hull identification number, if assigned; and
 13. Signature of the applicant, acknowledged before a Notary Public or witnessed by a Department employee.
- D.** As prescribed under A.R.S. § 5-321, the applicant shall submit a use tax receipt issued by the Arizona Department of Revenue with the application for registration unless any one of the following conditions apply:
1. The applicant is exempt from use tax as provided under 15 A.A.C. Chapter 5,
 2. The applicant is transferring the watercraft from another jurisdiction to Arizona without changing ownership,
 3. The applicant submits a bill of sale or receipt showing the sales or use tax was paid at the time of purchase,
or
 4. The applicant submits a notarized affidavit of exemption stating that the acquisition of the watercraft was for rental or resale purposes.
- E.** An applicant for a watercraft dealer registration authorized under A.R.S. § 5-322(F), shall be a business offering watercraft for sale or a watercraft manufacturer registered by the U.S. Coast Guard. A person shall display dealer registration for watercraft demonstration purposes only. For the purposes of this Section, "demonstration" means to operate a watercraft on the water for the purpose of selling, trading, negotiating, or attempting to negotiate the sale or exchange of interest in new watercraft, and includes operation by a manufacturer for purposes of testing a watercraft. Demonstration does not include operation of a watercraft for personal purposes by a dealer or manufacturer or an employee, family member, or an associate of a dealer or manufacturer. The watercraft dealer registration is subject to invalidation pursuant to R12-4-506 if a watercraft with displayed dealer registration is used for purposes other than those authorized under A.R.S. § 5-322(F) or this Section. A watercraft dealer registration applicant shall submit an application to the Department. The application is furnished by the Department and is available at any Department office. The applicant shall provide the following information on the application:
1. All business names used for the sale or manufacture of watercraft in Arizona;
 2. Mailing address and telephone number for each business for which a watercraft dealer registration is requested;
 3. Tax privilege license number;
 4. U.S. Coast Guard manufacturer identification code, when applicable;
 5. Total number of certificates of number and decals requested; and
 6. The business owner's or manager's:
 - a. Name,
 - b. Business address,
 - c. Telephone number, and
 - d. Signature.
- F.** In addition to submitting the application form and any other information required under this Section, the applicant for watercraft registration shall submit one or more of the following additional forms of documentation:

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1. Original title if the watercraft is titled in another state;
 2. Original registration if the watercraft is from a non-titling state;
 3. Bill of sale as defined under R12-4-501 if the watercraft has never been registered or titled in any state;
 4. Letter of gift as defined under R12-4-501 if the watercraft was received as a gift and was never registered or titled in any state;
 5. Court order or other legal documentation establishing lawful transfer of ownership;
 6. Letter of documentation or letter of deletion, ~~required when the watercraft was previously documented~~ issued by the U.S. Coast Guard;
 7. Statement of facts form furnished by the Department and available from any Department office when none of the documentation identified under subsections (F)(1) through (F)(6) exists either in the possession of the watercraft owner or in the records of any jurisdiction responsible for registering or titling watercraft. An applicant for watercraft registration under a statement of facts shall present the watercraft for inspection at a Department office. The statement of facts form shall include the following information:
 - a. Hull identification number,
 - b. Certification that the watercraft meets one of the following conditions:
 - i. The watercraft was manufactured prior to 1972, is 12 feet in length or less, and is not propelled by an inboard engine;
 - ii. The watercraft is owned by the applicant and has never been registered or titled;
 - iii. The watercraft was owned in a state that required registration, but was never registered or titled; or
 - iv. The watercraft was purchased, received as a gift, or received as a trade and has not been registered, titled, or otherwise documented in the past five years.
 - c. Signature of the applicant, acknowledged before a Notary Public or witnessed by a Department employee.
 8. An original certificate of origin when all of the following conditions apply:
 - a. The watercraft was purchased as new,
 - b. The applicant is applying for watercraft registration within a year of purchasing the watercraft, and
 - c. The certificate of origin is not held by a lien holder.
- G.** If the watercraft is being transferred to a person other than the original listed owner, the applicant for a watercraft registration shall submit a release of interest. The Department may require the applicant to provide a release of interest that is acknowledged before a Notary Public or witnessed by a Department employee when the Department is unable to verify the signature on the release of interest.
- H.** If the original title is held by a lien holder, the applicant for a watercraft registration shall submit a form furnished by the Department and available from any Department office along with a copy of the title. The applicant shall comply with the following requirements when submitting the form:
1. The applicant shall provide the following information on the form:
 - a. Applicant's name,
 - b. Applicant's mailing address,

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- c. Make and model of watercraft, and
 - d. Watercraft hull identification number.
2. The applicant shall ensure the lien holder provides the following information on the form:
 - a. Lien holder's name,
 - b. Lien holder's mailing address,
 - c. Name of person completing the form on behalf of the lien holder,
 - d. Title of person completing the form on behalf of the lien holder, and
 - e. Signature of the person completing the form on behalf of the lien holder, acknowledged before a Notary Public or witnessed by a Department employee.
- I.** If the watercraft's original title or registration is lost, the Department shall register a watercraft upon receipt of one of the following:
 1. A letter or printout from any jurisdiction responsible for registering or titling watercraft that verifies the owner of record for that specific watercraft;
 2. A printout of the Vessel Identification System for that specific watercraft from the U.S. Coast Guard and verification from the appropriate state agency that the information regarding the owner of record for that specific watercraft is correct and current;
 3. A statement of facts by the applicant as described under subsection (F)(7) if the watercraft has not been registered, titled, or otherwise documented in the past five years; or
 4. The abandoned or unreleased watercraft approval letter issued by the Department, as established under R12-4-507(I).
- J.** The Department shall issue a watercraft registration within 30 calendar days of receiving a valid application and the documentation required under this Section from the applicant or a watercraft agent authorized under R12-4-509.
- K.** All watercraft registrations and supporting documentation are subject to verification by the Department and to the requirements established under R12-4-505. The Department shall require a watercraft to be presented for inspection to verify the information provided by an applicant if the Department has reason to believe the information provided by the applicant is inaccurate or the applicant is unable to provide the required information.
- L.** The Department shall deem an application invalid if the Department receives legal documentation of any legal action that may affect ownership of that watercraft.
- M.** The Department shall invalidate a watercraft registration if the registration is obtained by an applicant who makes a false statement or provides false information on any application, statement of facts, or written instrument submitted to the Department.

Historical Note

Former Section R12-4-84 renumbered as Section R12-4-502 without change effective August 13, 1981 (Supp. 81-4). Amended effective January 2, 1985 (Supp. 85-1). Former Section R12-4-502 repealed, new Section R12-4-502 adopted effective May 27, 1992 (Supp. 92-2). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R.

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4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-503. Renewal of Watercraft Registration; Duplicate Watercraft Registration or Decal

- A.** The owner of a registered watercraft shall renew the watercraft's registration no later than the day before the prior registration period expires.
1. To renew a watercraft's registration in person or by mail, an applicant shall pay the registration fee authorized under R12-4-504 and present any one of the following:
 - a. Current or prior certificate of number,
 - b. Valid driver's license,
 - c. Valid Arizona Motor Vehicle Division identification card,
 - d. Valid passport, or
 - e. Department-issued renewal notice.
 2. The owner of a registered watercraft may renew a watercraft registration by accessing the Department's online system and paying the applicable watercraft registration fee authorized under R12-4-504.
- B.** The owner of a registered watercraft may obtain a duplicate watercraft registration or decal in person or by mail. To obtain a duplicate watercraft registration or decal in person or by mail, an applicant shall:
1. Complete and submit an application for a duplicate certificate and/or decal form to the Department or its authorized agent, available from any Department office and on the Department's website; and
 2. Pay the duplicate watercraft registration fee authorized under R12-4-504.
- C.** If made available by the Department, the owner of a registered watercraft may obtain a duplicate watercraft registration or decal by accessing the Department's online system and paying the duplicate watercraft registration fee authorized under R12-4-504.
- D.** When a request for a watercraft registration renewal or duplicate watercraft registration or decal is submitted by mail or online, the Department shall mail the registration or decal, as applicable, to the address of record, unless the Department receives a notarized request from the registered owner instructing the Department to mail the duplicate registration or decal to another address.

Historical Note

Former Section R12-4-85 renumbered as Section R12-4-503 without change effective August 13, 1981 (Supp. 81-4).

Former Section R12-4-503 renumbered to R12-4-519, new Section R12-4-503 adopted effective May 27, 1992 (Supp. 92-2). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-504. Watercraft Fees; Penalty for Late Registration; Staggered Registration Schedule

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- A.** The following fees are required, when applicable as authorized under A.R.S. §§ 5-321 and 5-322:
1. Motorized watercraft registration fees are assessed as follows:
 - a. Twelve feet and less: \$20
 - b. Twelve feet one inch through sixteen feet: \$22
 - c. Sixteen feet one inch through twenty feet: \$30
 - d. Twenty feet one inch through twenty-six feet: \$35
 - e. Twenty-six feet one inch through thirty-nine feet: \$39
 - f. Thirty-nine feet one inch through sixty-four feet: \$44
 - g. Sixty-four feet one inch and over: \$66
 - h. For the purposes of this subsection, the length of the motorized watercraft shall be measured in the same manner prescribed under A.R.S. § 5-321(C).
 2. Motorized watercraft transfer fee: \$13.
 3. Duplicate motorized watercraft registration: \$8.
 4. Duplicate decal: \$8.
 5. Watercraft dealer certificate of number: \$20.
 6. Abandoned or unreleased watercraft application fee: \$100.
 7. Unclaimed towed watercraft application fee: \$100.
- B.** The Department or its agent shall collect the entire registration fee for a late registration renewal and a penalty fee of \$5, unless exempt under A.R.S. § 5-321(L) ~~or the expiration date falls on a Saturday, Sunday, or state holiday, and the registration is renewed before the close of business on the next working day.~~ The Department or its agent shall not assess a penalty fee when a renewal is mailed before the expiration date, as evidenced by the postmark.
- C.** All new watercraft registrations expire 12 months after the date of issue.
- D.** Resident and nonresident watercraft registration renewals:
1. Shall be valid for a period of 7 to 18 months depending on the expiration month.
 - a. This provision applies to the initial renewal period only.
 - b. The Department shall prorate fees accordingly.
 2. May be renewed up to six months prior to the expiration month.
 3. Shall expire on the last day of the month indicated by the last two numeric digits of the AZ number, as shown in the following table:

Last two numeric digits of AZ number	Expiration month
00 12 24 36 48 60 72 84 96	December
01 13 25 37 49 61 73 85 97	January
02 14 26 38 50 62 74 86 98	February
03 15 27 39 51 63 75 87 99	March
04 16 28 40 52 64 76 88	April
05 17 29 41 53 65 77 89	May

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06	18	30	42	54	66	78	90	June
07	19	31	43	55	67	79	91	July
08	20	32	44	56	68	80	92	August
09	21	33	45	57	69	81	93	September
10	22	34	46	58	70	82	94	October
11	23	35	47	59	71	83	95	November

- E. Watercraft dealer, manufacturer, and governmental use registration renewals expire on October 31 of each year.
- F. Livery and all other commercial use registration renewals expire on November 30 of each year.

Historical Note

Amended effective December 5, 1978 (Supp. 78-6). Amended effective March 6, 1980 (Supp. 80-2). Former Section R12-4-86 renumbered as Section R12-4-504 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-504 repealed, new Section R12-4-504 adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 9 A.A.R. 1613, effective July 5, 2003 (Sup. 03-2). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by exempt rulemaking pursuant to A.R.S. § 41-1005(A)(2)(b) at 21 A.A.R. 1046, effective June 16, 2015 (Supp. 15-2). Amended by final exempt rulemaking at 23 A.A.R. 1034; amended by final rulemaking at 23 A.A.R. 1732, both effective August 5, 2017 (Supp. 17-2).

R12-4-505. Hull Identification Numbers

- A. The Department shall not register a watercraft without a hull identification number.
- B. The Department shall verify watercraft manufactured after November 1, 1972 have a primary hull identification number that complies with the requirements established under 33 C.F.R. 181, subpart C. The Department shall assign a hull identification number when the watercraft hull identification number does not meet the requirements established under 33 C.F.R. 181, subpart C.
- C. The hull identification number shall be fully visible and unobstructed at all times. Watercraft manufactured prior to August 1, 1984, are exempt from this requirement provided the obstruction is original equipment and was attached by the manufacturer.
- D. The Department shall assign a hull identification number to a watercraft with a missing hull identification number only if the Department determines:
 - 1. The hull identification number was not intentionally or illegally removed or altered, unless the application is accompanied by an order of forfeiture, order of seizure, or other civil process;
 - 2. The missing hull identification number was caused by error of the manufacturer or a government jurisdiction;
or
 - 3. The watercraft is a homemade watercraft as defined under R12-4-501.
- E. The Department may assign a hull identification number within 30 days of receipt of a valid application, as described under R12-4-502.

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- F.** The Department may accept a bill of sale presented with a missing or nonconforming hull identification number for registration purposes only when:
1. The hull identification number matches the nonconforming hull identification number on the watercraft;
 2. Supporting evidence exists that the seller is the owner of the watercraft;
 3. The watercraft is homemade and does not have a hull identification number; or
 4. The watercraft was manufactured prior to November 1, 1972.
- G.** Within 30 days of issuance, the applicant or registered owner shall:
1. Burn, carve, stamp, emboss, mold, bond, or otherwise permanently affix each hull identification number to a non-removable part of the watercraft in a manner that ensures any alteration, removal, or replacement will be obvious.
 2. Ensure the characters of each hull identification number affixed to the watercraft are no less than 1/4 inch in height.
 3. Permanently affix the hull identification number as follows:
 - a. On watercraft with transoms, affix the hull identification number to the right or starboard side of the transom within two inches of the top of the transom or hull/deck joint, whichever is lower.
 - b. On watercraft without a transom, affix the hull identification number to the starboard outboard side of the hull, back or aft within one foot of the stern and within two inches of the top of the hull, gunwale, or hull/deck joint, whichever is lower.
 - c. On a catamaran or pontoon boat, affix the hull identification number on the aft crossbeam within one foot of the starboard hull attachment.
 - d. As close as possible to the applicable location established under subsections (a), (b), or (c) when rails, fittings, or other accessories obscure the visibility of the hull identification number.
 - e. Affix a duplicate of the visibly affixed hull identification number in an unexposed location on a permanent part of the hull.
 4. Certify to the Department that the hull identification number was permanently affixed to the watercraft. The certification statement is furnished by the Department when a hull identification number is issued. The certification statement shall include the location of the permanently affixed hull identification number.

Historical Note

Amended effective January 1, 1980 (Supp. 79-6). Former Section R12-4-87 renumbered as Section R12-4-505 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-505 repealed, new Section R12-4-505 adopted effective May 27, 1992 (Supp. 92-2). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-506. Invalidation of Watercraft Registration and Decals

- A.** Any watercraft registration obtained by fraud or misrepresentation is invalid from the date of issuance.

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- B.** A certificate of number and any decals issued by the Department under R12-4-502 are invalid if any one of the following occurs:
1. Any check, money order, or other currency certificate presented to the Department for payment of watercraft registration or renewal is found to be non-negotiable;
 2. Any person whose name appears on the certificate of number loses ownership of the watercraft by legal process;
 3. Arizona is no longer the state of principal operation;
 4. The watercraft is documented by the U.S. Coast Guard;
 5. An applicant provides incomplete or incorrect information to the Department and fails to provide the correct information within 30 days after a request by the Department;
 6. The Department revokes the certificate of number, AZ numbers, and decals as provided under A.R.S. § 5-391(I);
 7. The Department or its agent erroneously issued a certificate of number or any decals;
 8. A watercraft bearing a dealer registration is used for any purpose not authorized under R12-4-502(E); or
 9. A watercraft registered or used as a livery is operated in violation of A.R.S. § 5-371 or R12-4-514.
- C.** A person shall surrender the invalid certificate of number and decals to the Department within 15 calendar days of receiving written determination from the Department that the certificate of number or decals are invalid, unless the person appeals the Department's determination to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- D.** The Department shall not validate or renew an invalid watercraft registration or decals until the reason for invalidity is corrected or no longer exists.

Historical Note

Adopted effective December 4, 1984 (Supp. 84-6). Amended subsection (B) effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Amended subsection (B) effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Former Section R12-4-506 repealed, new Section R12-4-506 adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3).

Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-507. Transfer of Ownership of an Abandoned or Unreleased Watercraft

- A.** A person who has knowledge and custody of a watercraft abandoned on private property owned by that person may attempt to obtain ownership of the watercraft by way of the abandoned watercraft transfer process. A lienholder of foreclosed real property may assign an agent to act on its behalf.
- B.** The last registered owner of an abandoned or unreleased watercraft is presumed to be responsible for the watercraft, unless the watercraft is reported stolen.

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- C.** The operator of a self-storage facility located in this state and having a possessory lien shall comply with the requirements prescribed under A.R.S. Title 33, Chapter 15, Article 1 when attempting to obtain ownership of a watercraft abandoned while in storage.
- D.** A person having a possessory lien under a written agreement shall comply with the requirements prescribed under A.R.S. Title 33, Chapter 7, Article 6 when attempting to obtain ownership of a watercraft for which repairs or service fees remain unpaid.
- E.** Only a person acting within the scope of official duties as an employee or authorized agent of a government agency may order the removal of a watercraft abandoned on public property or a public waterway.
- F.** A person seeking ownership of an abandoned or unreleased watercraft shall submit an application to the Department and pay the fee established under R12-4-504. The application is furnished by the Department and available at any Department office. The application shall include the following information, if available:

 - 1. Hull identification number, unless exempt under R12-4-505;
 - 2. Registration number;
 - 3. Decal number;
 - 4. State of registration;
 - 5. Year of registration;
 - 6. Name, address, and daytime telephone number of the person who found the watercraft;
 - 7. For abandoned watercraft:
 - a. Address or description of the location where the watercraft was found,
 - b. Whether the watercraft was abandoned on private or public property, and
 - c. When applicable, for watercraft abandoned on private property, whether the applicant is the legal owner of the property;
 - 8. Condition of the watercraft: wrecked, stripped, or intact;
 - 9. State in which the watercraft will be operated;
 - 10. Length of time the watercraft was abandoned;
 - 11. Reason why the applicant believes the watercraft is abandoned; and
 - 12. Signature of the applicant, acknowledged before a Notary Public or witnessed by a Department employee.
- G.** This state and its agencies, employees, and agents are not liable for relying in good faith on the contents of the application.
- H.** The Department shall attempt to determine the name and address of the registered owner by:

 - 1. Conducting a search of its watercraft database when documentation indicates the watercraft was previously registered in this state, or
 - 2. Requesting the watercraft record from the other state when documentation indicates the watercraft was previously registered in another state.
- I.** If the Department is able to determine the name and address of the registered owner, the Department shall send written notice of the applicant's attempt to register the watercraft to the owner by certified mail, return receipt requested.

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1. If service is successful or upon receipt of a response from the registered owner, the Department shall send the following written notification to the applicant, as appropriate:
 - a. If the registered owner provides a written release of interest in the watercraft, the Department shall mail the release of interest and an abandoned or unreleased watercraft approval letter to the applicant. The applicant shall apply for watercraft registration in compliance with the requirements established under R12-4-502.
 - b. If the registered owner provides written notice to the Department refusing to release interest in the watercraft, the Department shall notify the applicant of the owner's refusal. The Department shall not register the watercraft to the applicant unless the applicant provides proof of ownership and complies with the requirements established under R12-4-502.
 - c. If the registered owner does not respond to the notice in writing within 30 days from the date of receipt, the Department shall notify the applicant of the owner's failure to respond. The Department shall not register the watercraft to the applicant unless the applicant provides proof of ownership and complies with the requirements established under R12-4-502.
 - d. If the registered owner does not respond to the notice within 180 days from the date of receipt of the notice, this failure to act shall constitute a waiver of interest in the watercraft by any person having an interest in the watercraft, and the watercraft shall be deemed abandoned for all purposes. The Department shall mail an abandoned or unreleased watercraft approval letter to the applicant. The applicant shall apply for watercraft registration in compliance with the requirements established under R12-4-502.
 2. If the written notice is returned unclaimed or refused, the Department shall notify the applicant within 15 days of the notice being returned that the attempt to contact the registered owner was unsuccessful.
- J.** If the Department is unable to identify or serve the registered owner, the Department shall post a notice of intent on the Department's website within 45 days of the Department's notification to the applicant as provided in subsection (I)(2).
1. The notice shall include a statement of the Department's intent to transfer ownership of the watercraft ten days after the date of posting, unless the Department receives notice from the registered owner refusing to release interest in the watercraft within that ten-day period following posting.
 2. If the watercraft remains unclaimed after the ten-day period, the Department shall mail an abandoned or unreleased watercraft approval letter to the applicant. The applicant shall apply for watercraft registration in compliance with the requirements established under R12-4-502.
- K.** A government agency may submit an application for authorization to dispose of a junk watercraft abandoned on state or federal lands or waterways. The application is furnished by the Department and is available at any Department Office. Upon receipt of the application, the Department shall attempt to determine the name and address of the registered owner. If the Department is unable to identify and serve the registered owner, the Department shall publish a notice of intent to authorize the disposal of the junk watercraft as described under subsection (J).

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1. The published notice shall include a statement of the Department's intent to authorize the disposal of the watercraft ten days after the date of publication, unless the Department receives notice from the registered owner refusing to release interest in the watercraft within that ten-day period following publication.
2. If the watercraft remains unclaimed after the ten-day period, the Department shall mail an authorization to dispose of the junk watercraft to the government agency. The government agency may dispose of the abandoned watercraft and all indicia for that watercraft in any manner the agency determines expedient or convenient.

Historical Note

Adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1613, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final exempt rulemaking at 23 A.A.R. 1034; amended by final rulemaking at 23 A.A.R. 1732, both effective August 5, 2017 (Supp. 17-2).

R12-4-508. New Watercraft Exchanges

- A.** A person may request a no-fee replacement registration for a new watercraft, provided all of the following conditions apply:
1. The person purchased the newly registered watercraft from a new watercraft dealer,
 2. The person returned the watercraft to the new watercraft dealer within 30 days of purchase, and
 3. The new watercraft dealer exchanged the returned watercraft for a watercraft of the same year, make, and model within the same 30 day period.
- B.** To obtain a no-fee replacement registration, the person shall submit the original watercraft registration and a letter from the new watercraft dealer to the Department. The letter shall include all of the following information:
1. A statement that the original watercraft was replaced,
 2. The hull identification number for the original watercraft,
 3. The hull identification number for the replacement watercraft,
 4. The buyer's name, and
 5. The new watercraft dealer's name.

Historical Note

Adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-509. Watercraft Dealers; Agents

- A.** The Department may authorize a watercraft dealer to act as an agent on behalf of the Department for the purpose of issuing temporary certificates of number valid for 45 days for new or used watercraft, provided:
1. The applicant's previous authority to act as a watercraft agent under A.R.S. § 5-321(I) has not been canceled by the Department within the preceding 24 months, and

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2. The applicant is a business located and operating within this state and sells watercraft.
- B.** An applicant seeking watercraft agent authorization shall submit an application to the Department. The application is furnished by the Department and available at the Arizona Game and Fish Department, 5000 W. Carefree Highway, Phoenix, AZ 85086. The applicant shall provide the following information on the application:
1. Principal business or corporation name, address, and telephone number or if not a corporation, the full name, address, and telephone number of all owners or partners;
 2. Name, address, and telephone number of the owner or manager responsible for compliance with this Section;
 3. Whether the applicant has previously issued temporary certificates of number under A.R.S. § 5-321(I);
 4. All of the following information specific to the location from which new watercraft are to be sold and temporary certificates of number issued:
 - a. Name of owner or manager;
 - b. Business hours;
 - c. Business telephone number;
 - d. Business type;
 - e. Storefront name; and
 - f. Street address;
 5. Manufacturers of the watercraft to be sold; and
 6. Signature of person named under subsection (B)(2).
- C.** The Department shall either approve or deny the application within the licensing time-frame established under R12-4-106.
- D.** Authorization to act as a watercraft agent is specific to the dealer's business location designated on the application and approved by the Department, unless the dealer is participating in a boat show for the purpose of selling watercraft.
- E.** The watercraft agent shall:
1. Use the assigned watercraft agent number when issuing a temporary certificate of number,
 2. Use the online application system and forms supplied by the Department; and
 3. Collect the appropriate fee as prescribed under R12-4-504 and R12-4-527.
- F.** A watercraft agent is prohibited from issuing a temporary certificate of number for a watercraft when:
1. The watercraft is involved in legal proceedings such as, but not limited to, a marital dissolution, probate, or bankruptcy proceeding;
 2. The watercraft is abandoned or unreleased;
 3. The watercraft is homemade; or
 4. The watercraft has a nonconforming HIN.
- G.** A watercraft agent issuing a temporary certificate of number to the purchaser of a watercraft shall comply with all the following:
1. The watercraft agent shall obtain a completed application that complies with the requirements established under R12-4-502.

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2. The watercraft agent shall identify to the applicant the state registration fee and the nonresident boating safety infrastructure fee, when applicable, separately from any other costs.
 3. The fees collected under subsection (E)(3) shall be submitted electronically to the Department prior to the submission of the documentation required under subsection (G)(4).
 4. Within five business days of issuing a temporary certificate of number, a watercraft agent shall deliver or mail the following documentation to the Arizona Game and Fish Department, Watercraft Agent Representative, 5000 W. Carefree Highway, Phoenix, AZ 85086:
 - a. For a new watercraft:
 - i. Original application;
 - ii. Original or copy of the bill of sale issued by the watercraft agent; and
 - iii. Original certificate of origin;
 - b. For a used watercraft:
 - i. Original application;
 - ii. Original or copy of the bill of sale issued by the watercraft agent;
 - iii. Ownership document, such as but not limited to a title, bill of sale, letter of gift or U.S. Coast Guard letter of documentation or letter of deletion ~~when the watercraft was previously documented~~ issued by the U.S. Coast Guard; and
 - iv. Lien release, when applicable.
- H.** The Department may cancel the watercraft agent's authorization if the agent does any one of the following:
1. Fails to comply with the requirements established under this Article;
 2. Submits more than one electronic payment dishonored because of insufficient funds, payments stopped, or closed accounts to the Department within a calendar year;
 3. Predates, postdates, alters, or provides or knowingly allows false information to be provided on an application for a temporary certificate of number; or
 4. Falsifies the application for authorization as a watercraft agent.
- I.** The Department shall provide a written notice to the person stating the reason for the denial or cancellation of watercraft agent status, as applicable. The person may appeal the denial or cancellation to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 9 A.A.R. 1613, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

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R12-4-510. Refund of Fees Paid in Error

- A.** The Department shall issue a refund for watercraft registration fees paid and, when applicable, the Nonresident Boating Safety Infrastructure fee when:
1. The registered owner has erroneously paid those fees twice for the same watercraft; or
 2. The registered owner has erroneously paid those fees for a watercraft that has already been sold to another individual; ~~or~~
 3. ~~The registered owner registered the watercraft in error.~~
- B.** To request a refund of fees paid in error, the person applying for the refund shall surrender all of the following to the Department:
1. Original certificate of number;
 2. Registration decals; and
 3. Nonresident Boating Safety Infrastructure Decal, when applicable.
- C.** A person requesting a refund of fees shall submit the request to the Department within 30 calendar days of the date the payment was received by the Department.
- D.** The Department shall not refund:
1. A late registration penalty fee.
 2. A fee collected by an authorized third-party provider. A person who paid their watercraft registration fee to a third-party provider shall request a refund of fees from that third-party provider.

Historical Note

Adopted effective May 27, 1992 (Supp. 92-2). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-511. Personal Flotation Devices

- A.** For the purpose of this Section, “wear” means:
1. The personal flotation device is worn according to the manufacturer’s design or recommended use;
 2. All of the device’s closures are fastened, snapped, tied, zipped, or secured according to the manufacturer’s design or recommended use; and
 3. The device is adjusted for a snug fit.
- B.** The operator of a canoe, kayak, or other watercraft shall ensure the watercraft is equipped with at least one correctly-sized, U.S. Coast Guard-approved, wearable personal flotation device that is in good and serviceable condition for each person on board the watercraft. The operator of any watercraft shall also ensure the wearable personal flotation devices on board the watercraft are readily accessible and available for immediate use.
- C.** In addition to the personal flotation devices described under subsection (B), the operator of a watercraft that is 16 feet or more in length shall ensure the watercraft is also equipped with a U.S. Coast Guard-approved throwable personal flotation device: buoyant cushion, ring buoy, or horseshoe buoy. Canoes and kayaks are not subject to this subsection.

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- D. The operator of a watercraft shall ensure a person twelve years of age or under on board a watercraft shall wear a U.S. Coast Guard approved wearable personal flotation device whenever the watercraft is underway.
- E. The operator of a personal watercraft shall ensure each person aboard the personal watercraft is wearing a wearable personal flotation device approved by the U.S. Coast Guard whenever the personal watercraft is underway.
- F. Subsections (B), (C), and (D) do not apply to the operation of a racing shell or rowing skull during competitive racing or supervised training, if the racing shell or rowing skull is manually propelled, recognized by a national or international association for use in competitive racing, and designed to carry and does carry only equipment used solely for competitive racing.

Historical Note

Amended effective May 26, 1978 (Supp. 78-3). Former Section R12-4-80 renumbered as Section R12-4-511 without change effective August 13, 1981 (Supp. 81-4). Amended effective May 27, 1992 (Supp. 92-2). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-512. Fire Extinguishers Required for Watercraft

- A. The operator of watercraft shall ensure all required fire extinguishers are readily accessible and available for immediate use.
- B. As prescribed under A.R.S. § 5-332, an operator of a:
 - 1. Watercraft less than 26 feet in length shall carry one U.S. Coast Guard-approved B-I type fire extinguisher on board if the watercraft has one or more of the following:
 - a. An inboard engine,
 - b. Closed compartments where portable fuel tanks may be stored,
 - c. Double bottoms not sealed to the hull or which are not completely filled with flotation materials,
 - d. Closed living spaces,
 - e. Closed stowage compartments in which combustible or flammable materials are stored,
 - f. Permanently installed fuel tanks (fuel tanks that cannot be moved in case of a fire or other emergency are considered permanently installed), and
 - g. A fixed fire extinguishing system installed in the engine compartment.
 - 2. Watercraft 26 feet to less than 40 feet shall carry on board the following equipment as designated and approved by the U.S. Coast Guard:
 - a. At least two B-I type hand-portable fire extinguishers or at least one B-II type hand-portable fire extinguisher, or
 - b. At least one B-I type approved hand-portable fire extinguisher if a fixed fire extinguishing system is installed in the engine compartment.

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3. Watercraft 40 feet to not more than 65 feet shall carry on board the following equipment as designated and approved by the U.S. Coast Guard:
 - a. At least three B-I type hand-portable fire extinguishers or at least one B-I and one B-II type hand-portable fire extinguishers, or
 - b. At least two B-I type hand-portable fire extinguishers or at least one B-II type hand-portable fire extinguisher when a fixed fire extinguishing system is installed in the engine compartment.

Historical Note

Former Section R12-4-81 renumbered as Section R12-4-512 without change effective August 13, 1981 (Supp. 81-4). Amended effective June 14, 1990 (Supp. 90-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-513. Watercraft Incident and Casualty Reports

- A. The operator or owner of a watercraft involved in any collision, incident or other casualty resulting in injury, death, or property damage exceeding \$500 shall submit the report required under A.R.S. § 5-349 to the Department. The report shall be made on a form furnished by the Department or provided by the law enforcement officer investigating the collision, incident, or other casualty. The operator or owner of the watercraft shall complete the form in full and clearly identify on the form any information that is either not applicable or unknown. The operator or owner of the watercraft submitting the report shall provide all of the information required under 33 C.F.R. 173.57.
- B. The person completing the form shall deliver, mail, or email the form to the Arizona Game and Fish Department, Law Enforcement Branch at 5000 W. Carefree Hwy, Phoenix, AZ 85086 or BoatAccidentReporting@azgfd.gov, as applicable.
- C. The operator or owner of a watercraft involved in any collision, incident or other casualty resulting in injury or death shall submit the report to the Department no later than 48 hours after the incident.
- D. The operator or owner of a watercraft involved in any collision, incident or other casualty resulting only in property damage exceeding \$500 shall submit the report to the Department no later than five days after the incident.

Historical Note

Adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-514. Liveries

- A. A person who rents, leases, or offers any watercraft for compensation, with or without an operator, for recreational, non-commercial use shall register the watercraft as a livery as established under R12-4-502.
- B. A watercraft owned by a boat livery that requires registration and does not have the certificate of number on board shall be identified while in use by means of a:

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1. Placard or some other form of display that is affixed to the watercraft and is visible when the watercraft is underway. The placard or other form of display shall indicate the business name and current phone number of the livery.
 2. Receipt provided by the livery to the person operating the rented watercraft. The receipt shall contain the following information:
 - a. Business name and address of the livery as shown on the certificate of number,
 - b. Watercraft registration number as issued by the Department,
 - c. Beginning date and time of the rental period, and
 - d. Written acknowledgment on the receipt of compliance with the requirements prescribed under A.R.S. § 5-371, signed by both the livery operator or their agent and the renter.
- C.** A person operating a rented or leased watercraft or operating a passenger for hire watercraft shall carry the registration or receipt onboard and produce it upon request to any peace officer.
- D.** Failure to comply with the requirements prescribed under A.R.S. § 5-371 and this Section may result in the invalidation of the watercraft registration and decals as provided under A.R.S. § 5-391(A) and R12-4-506.

Historical Note

Adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-515. Display of AZ Numbers and Registration Decals

- A.** A person shall not use, operate, moor, anchor, or grant permission to use, operate, moor, or anchor a watercraft on the boundaries of this state unless such watercraft displays a valid number and current registration decal in the manner established under subsection (B). This Section does not apply to undocumented watercraft displaying a valid temporary numbering certificate authorized under R12-4-509 or exempt under A.R.S. § 5-322.
- B.** The owner of a watercraft shall display the AZ number and registration decals as follows:
1. The AZ numbers shall:
 - a. Be clearly visible and painted on or attached to each exterior side of the forward half of a non-removable portion of the watercraft;
 - b. Be in a color that contrasts with the watercraft's background color so as to be easily read from a distance;
 - c. Include the letters "AZ" and the suffix, separated by a hyphen or equivalent space between the letters "AZ" and the suffix; and
 - d. Read from left to right in well-proportioned block letters that are not less than three inches in height, excluding outline.
 2. The registration decals shall be affixed three inches in front of "AZ" on both sides of the forward half of a non-removable portion of the watercraft.

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- C. On watercraft so constructed that it is impractical or impossible to display the AZ numbers in a prominent position on the forward half of the hull or permanent superstructure, the AZ numbers may be displayed on brackets or fixtures securely attached to the forward half of the watercraft.
- D. Persons possessing a dealer watercraft certificate of number issued under A.R.S. § 5-322(F) shall visibly display the AZ numbers and validating registration decals as established under this Section, except that the numbers and decals may be printed or attached to temporary, removable signs that are securely attached to the watercraft being demonstrated.
- E. Expired registration decals issued by any jurisdiction shall be covered or removed from the watercraft, so that only the current registration decals are visible.
- F. Invalid watercraft AZ numbers and registration decals shall not be displayed on any watercraft. The owner of the watercraft shall surrender the AZ numbers and registration decals to the Department in compliance with R12-4-506(C).

Historical Note

Section R12-4-515 renumbered from R12-4-501 and amended effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-516. Watercraft Sound Level Restriction

- A. A person shall not operate a watercraft upon the waters of this state if the watercraft emits a noise level that exceeds any of the following.
 - 1. A noise level of 86 dB(A), measured at a distance of 50 feet or more from the watercraft on the “A” weighted scale of a sound level instrument that conforms to recognized industry standards and is maintained according to the manufacturer’s instructions.
 - 2. For engines manufactured:
 - a. Before January 1, 1993, a noise level of 90 dB(A) when subjected to the Society of Automotive Engineers Recommended Practice stationary sound level test SAEJ2005, revised July 2004 and containing no later editions or amendments; and
 - b. On or after January 1, 1993, a noise level of 88 dB(A) when subjected to the Society of Automotive Engineers Recommended Practice stationary sound level test SAEJ2005, revised July 2004 and containing no later editions or amendments; or
 - 3. A noise level of 75 dB(A) measured as specified in the Society of Automotive Engineers Recommended Practice shoreline sound test SAEJ1970, revised September 2003 and containing no later editions or amendments.
- B. The materials incorporated by reference in subsection (A) may be viewed at any Department office and are available for purchase from SAE International, 400 Commonwealth Dr, Warrendale, PA 15096-0001 or online at www.sae.org.

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- C. A measurement of noise level that is in compliance with this Section does not preclude the conducting of a test or multiple tests of noise levels.
- D. A peace officer authorized to enforce the provisions of this Section who has reason to believe a watercraft is being operated in violation of the noise levels established in this Section may direct the operator of the watercraft to submit the watercraft to an onsite test to measure noise level.
- E. An operator of a watercraft who receives a request from a peace officer to test the noise level of the watercraft under subsection (D) shall allow the watercraft to be tested. If, based on a measurement or test to determine the noise level of a watercraft administered under this Section, the noise level of the watercraft exceeds one or more of the decibel level standards in subsection (A), the operator of the watercraft shall take immediate measures to correct the violation as prescribed under A.R.S. § 5-391(C).
- F. This Section shall not apply to watercraft operated under permits issued in accordance with A.R.S. § 5-336(C).

Historical Note

Former Section R12-4-82 renumbered as Section R12-4-516 without change effective August 13, 1981 (Supp. 81-4).
Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-517. Watercraft Motor and Engine Restrictions

- A. A person operating a motorized watercraft on the following waters shall only use an electric motor not exceeding 10 manufacturer-rated horsepower:
 - 1. Ackre Lake
 - 2. Bear Canyon Lake
 - 3. Bunch Reservoir
 - 4. Carnero Lake
 - 5. Chaparral Park Lake
 - 6. Cluff Ponds
 - 7. Coconino Reservoir
 - 8. Coors Lake
 - 9. Dankworth Pond
 - 10. Dogtown Reservoir
 - 11. Fortuna Lake
 - 12. Goldwater Lake
 - 13. Granite Basin Lake
 - 14. Horsethief Basin Lake
 - 15. Hulsey Lake
 - 16. J.D. Dam Lake
 - 17. Knoll Lake
 - 18. Lee Valley Lake

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19. McKellips Park Lake
20. Pratt Lake
21. Quigley Lake
22. Redondo Lake
23. Riggs Flat Lake
24. Roper Lake
25. Santa Fe Lake
26. Scott's Reservoir
27. Sierra Blanca Lake
28. Soldier Lake (in Coconino County)
29. Stehr Lake
30. Stoneman Lake
31. Tunnel Reservoir
32. Whitehorse Lake
33. Willow Valley Lake
34. Woodland Reservoir
35. Woods Canyon Lake

B. A person operating a motorized watercraft on the following waters shall use only a single electric motor or single gasoline engine not exceeding 10 manufacturer-rated horsepower:

1. Arivaca Lake
2. Ashurst Lake
3. Becker Lake
4. Big Lake
5. Black Canyon Lake
6. Blue Ridge Reservoir
7. Cataract Lake
8. Chevelon Canyon Lake
9. Cholla Lake Hot Pond
10. Concho Lake
11. Crescent Lake
12. Fool Hollow Lake
13. Kaibab Lake
14. Kinnikinick Lake
15. Little Mormon Lake
16. Lower Lake Mary
17. Luna Lake
18. Lynx Lake

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19. Marshall Lake
 20. Mexican Hay Lake
 21. Nelson Reservoir
 22. Parker Canyon Lake
 23. Peña Blanca Lake
 24. Rainbow Lake
 25. River Reservoir
 26. Show Low Lake
 27. Whipple Lake
 28. White Mountain Lake (in Apache County)
 29. Willow Springs Lake
- C.** A person shall not operate a watercraft on Frye Mesa Reservoir, Rose Canyon Lake, or Snow Flat Lake, except as authorized under subsection (D).
- D.** A person who possesses a valid use permit issued by the U.S. Forest Service may operate a non-motorized watercraft only on Rose Canyon Lake on any Tuesday, Wednesday, or Thursday during June and July from 9:30 a.m. to 4:30 p.m. Mountain Time Zone. This subsection does not exempt the person from complying with all applicable requirements imposed by federal or state laws, rules, regulations, or orders.
- E.** This Section does not apply to watercraft of governmental agencies or to Department-approved emergency standby watercraft operated by lake concessionaires if operating to address public safety or public welfare.

Historical Note

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective May 3, 1976 (Supp. 76-3).
Amended as an emergency effective July 9, 1976 (Supp. 76-4). Amended effective June 4, 1979 (Supp. 79-3).
Former Section R12-4-89 renumbered as Section R12-4-517 without change effective August 13, 1981 (Supp. 81-4).
Amended subsections (A) and (C) effective December 17, 1981 (Supp. 81-6). Amended effective December 28, 1982 (Supp. 82-6). Amended subsections (A) through (C) effective December 4, 1984 (Supp. 84-6). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by exempt rulemaking at 17 A.A.R. 1189, effective May 24, 2011 (Supp. 11-2). Subsection (A)(9) corrected clerical error (Supp. 11-3). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-518. Regattas

- A.** When a regatta permit is issued by the Coast Guard, the person in control of the regatta shall at all times be responsible for compliance with the stipulations as prescribed within the regatta permit. Such stipulations may include but not be limited to:
1. A specified number of patrol or committee boats and identified as such.
 2. Availability of emergency medical services.
 3. Spectator control if there exists a danger that life or property is in jeopardy.

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- B. Non-compliance with any stipulation of an authorized permit which jeopardizes the public welfare shall be cause to terminate the regatta until the person in control or a person designated by the one in control satisfactorily restores compliance.
- C. When a regatta applicant is informed in writing by the Coast Guard that a permit is not required, such regatta may take place, but shall not relieve the regatta sponsor of any responsibility for the public welfare or confer any exemption from state boating and watersports laws and rules.
- D. The regatta sponsor and all participants shall comply with aquatic invasive species requirements established under A.R.S Title 17, Chapter 2, Article 3.1 and 12 A.A.C. 4, Article 449.

Historical Note

Adopted effective March 5, 1982 (Supp. 82-2). Amended by final rulemaking at 18 A.A.R. 196, effective January 10, 2012 (Supp. 12-1).

R12-4-519. Reciprocity

As authorized under A.R.S. § 5-322(E), all watercraft currently numbered or exempt from numbering under the provisions of their state of principal operation are exempt from numbering for a period of 90 days after entering this state.

Historical Note

Section R12-4-519 renumbered from R12-4-503 and amended effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-520. Arizona Aids to Navigation System

- A. The Arizona aids to navigation system is the same as that prescribed under 33 C.F.R. 62, revised July 1, 2014, which is incorporated by reference in this Section. The incorporated material is available at any Department office, online at www.gpoaccess.gov, or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000. This Section does not include any later amendments or editions of the incorporated material.
- B. A person shall not mark the waterways or their shorelines in this state with mooring buoys, regulatory markers, aids to navigation, lights, or other types of permitted waterway marking devices, without authorization from the governmental agency or the private interest having jurisdiction on such waters.
- C. A person shall not moor or fasten a watercraft to any marker not intended for mooring, or willfully damage, tamper with, remove, obstruct, or interfere with any aid to navigation, regulatory marker or other type of permitted waterway marking devices, except in the performance of authorized maintenance responsibilities or as authorized under R12-4-518 or this Section.
- D. If a government agency or private interest has not exercised its authority to control watercraft within its jurisdiction under A.R.S. § 5-361, or if waters are directly under the jurisdiction of the Commission, the Department has the authority to control watercraft within that jurisdiction in accordance with the following guidelines:

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1. The Department may place controlled-use markers only where controlled operation of watercraft is necessary to protect life, property, or habitat, and shall move or remove the markers only if the need for the protection changes.
 2. The restrictions imposed are clearly communicated to the public by wording on the markers, such as those defined under R12-4-501.
- E.** A governmental agency, excluding federal agencies with jurisdiction over federal navigable waterways, has the authority to control watercraft within that jurisdiction in accordance with the following guidelines:
1. A government agency may place controlled-use markers only where controlled operation of watercraft is necessary to protect life, property, or habitat, and shall move or remove the markers only if the need for the protection changes.
 2. The restrictions imposed are clearly communicated to the public by wording on the markers, such as those defined under R12-4-501.
- F.** Any person may request establishment, change, or removal of controlled-use markers on waters under the jurisdiction of the Commission or on waters not under the jurisdiction of another government agency by submitting a written request providing the reasons for the request to the Arizona Game and Fish Department, 5000 W. Carefree Hwy, Phoenix, AZ 85086.
1. The Department shall either approve or deny the request within 60 days of receipt.
 2. A person may appeal the Department's denial of a request to the Commission as an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Section R12-4-520 adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-523. Controlled Operation of Watercraft

- A.** A person shall not operate any watercraft, or use any watercraft to tow a person on water skis, a surfboard, inflatable device, or similar object, device or equipment in a manner contrary to the area restrictions imposed by lawfully placed controlled-use markers, except for:
1. Law enforcement officers acting within the scope of their lawful duties;
 2. Persons involved in rescue operations;
 3. Persons engaged in government-authorized activities; and
 4. Persons participating in a regatta, during the time limits of the event only.
- B.** The exemptions listed under subsection (A) do not authorize any person to operate a watercraft in a careless, negligent, or reckless manner as prescribed under A.R.S. § 5-341.

Historical Note

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Section R12-4-520 adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-524. Towed Water Sports

- A.** An operator of a watercraft shall ensure an observer is on duty at all times when a person is being towed behind the watercraft or is surfing a wake created by the watercraft. The observer shall:
 - 1. Be twelve years of age or older;
 - 2. Be physically capable and mentally competent to act as an observer; and
 - 3. Continually observe the person or persons being towed behind the watercraft or surfing a wake created by the watercraft.
- B.** The operator of a watercraft shall ensure a person being towed behind the watercraft or riding a wake created by the watercraft is wearing a wearable personal flotation device approved by the U.S. Coast Guard whenever the watercraft is underway. This subsection applies to any contrivance designed for or used to tow a person behind a watercraft or ride the wake created by a watercraft regardless of whether or not the contrivance is attached to the watercraft. This includes, but is not limited to, boards, discs, hydrofoils, kites, inflatables, and water skis.
- C.** A person shall not operate a watercraft while a person is holding onto or is physically attached to any transom structure of the watercraft, including but not limited to a swim platform, swim deck, swim step, and swim ladder. This subsection does not apply to a person who is:
 - 1. Assisting with docking or departure activities,
 - 2. Exiting or entering the watercraft, or
 - 3. Engaging in law enforcement or emergency rescue activity.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-525. Revocation of Watercraft Certificate of Number, AZ Numbers, and Decals

- A.** For the purposes of this Section, “person” has same meaning as prescribed under A.R.S. § 5-301.
- B.** Upon notice of conviction of a person under A.R.S. § 5-391(G), the Department shall revoke for a period not to exceed two years the certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals of any Arizona registered watercraft owned by that person and involved in the violation.
- C.** Upon notice of conviction of a person under A.R.S. § 5-391(H), the Department shall revoke for a period not to exceed one year the certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals for any Arizona registered watercraft owned by that person and involved in the violation.

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- D.** Upon receiving notice of conviction, the Department shall serve notice under A.R.S. §§ 41-1092.03 and 41-1092.04 on the person convicted that the certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals of watercraft the person owns are subject to revocation.
- E.** A person whose certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals are subject to revocation may request a hearing. The person shall submit a written request to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Hwy, Phoenix, AZ 85086, within 30 calendar days of receiving the notice described under subsection (D).
- F.** If the person requests a hearing, the Department shall, within 60 days of receiving the request, schedule a hearing as prescribed under A.R.S. § 41-1092.05.
- G.** After a final decision to revoke the person's certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals, the Department shall serve upon the person an Order of Revocation. Within 15 calendar days of receipt of the notice, the person shall surrender to the Department the revoked certificates of number and decals.
- H.** The revocation of the certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals does not affect the legal title to or any property rights in the watercraft. Upon receipt of an application to transfer watercraft registration by the new watercraft owner, the Department shall terminate the revocation and allow the owner to transfer the owner's entire interest in the watercraft if the Department is satisfied the transfer is proposed in good faith and not for the purpose of defeating the revocation.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-526. Unlawful Mooring

- A.** A person, as defined under A.R.S. § 5-301, shall not moor, anchor, fasten to the shore, or otherwise secure a watercraft in any public body of water for more than 14 days within any period of 28 consecutive days unless:
 - 1. The waters are a special anchorage area as defined under A.R.S. § 5-301,
 - 2. Authorized for private dock or moorage, or
 - 3. Authorized by the government agency or private interest having jurisdiction over the waters.
- B.** A person shall remove an abandoned or submerged watercraft from public waters within 72 hours of notice by registered mail or personal service of notice to remove such watercraft.
- C.** The owner of any abandoned watercraft shall be responsible for all towing and storage fees resulting from the removal of the watercraft from public waters.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

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R12-4-527. Transfer of Ownership of a Towed Watercraft

- A.** For the purpose of this Section, “towed watercraft” means a watercraft that has been impounded by or is in the possession of a towing company located in this state.
- B.** Within 15 days of impounding a watercraft, a towing company shall submit a request to the Department for watercraft registration information as prescribed under A.R.S. § 5-324 and in compliance with A.R.S. § 5-399. The towing company shall present the towed watercraft to the closest Department office for identification if there is no discernible hull identification number or state-issued registration number.
- C.** Within 15 days of receiving the watercraft registration information from the Department, the towing company shall provide written notification by certified mail return receipt requested to the owner and lienholder, if known, of the watercraft’s location.
- D.** If a watercraft remains unclaimed after mailing the notice required under subsection (C) of this Section, the towing company shall submit all of the following to the Department within 15 days of sending the written notification to the owner and lienholder, when known:
 - 1. Evidence of compliance with notification requirements prescribed under A.R.S. § 5-399 and subsection (C);
 - 2. A report on a form furnished by the Department and available at any Department office. The form shall include all of the following information:
 - a. Name of towing company;
 - b. Towing company’s business address;
 - c. Towing company’s business telephone number;
 - d. Towing company’s Arizona Department of Public Safety tow truck permit number;
 - e. Towed watercraft’s hull identification number;
 - f. Towed watercraft’s state-issued registration number, registration decal, and year of expiration, if known;
 - g. Towed watercraft’s trailer license number, if available;
 - h. State and year of trailer registration, if available;
 - i. Towed watercraft’s color and manufacturer;
 - j. Towed watercraft’s condition, whether intact, stripped, damaged, or burned, along with a description of any damage;
 - k. Date the watercraft was towed;
 - l. Location from which the towed watercraft was removed;
 - m. Entity that ordered the removal of the towed watercraft, and if a law enforcement agency, include officer badge number, jurisdiction, and copy of report or towing invoice;
 - n. Location where the towed watercraft is stored; and
 - o. Name and signature of towing company’s authorized representative; and
 - 3. The unclaimed towed watercraft application fee authorized under A.R.S. § 5-399.03(2) and established under R12-4-504.

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- E.** The towing company shall notify the Department within 24 hours if the watercraft is released, returned to, redeemed, or repossessed by the owner, lienholder, or by a person identified in the Department's record as having an interest in the watercraft.
- F.** If the Department is unsuccessful in its attempt to identify or contact the registered owner or lienholder of the towed watercraft and has determined the towed watercraft is not stolen, the towing company shall:
 - 1. Follow the application procedures established under A.R.S. § 5-399.02(B), and
 - 2. Apply for watercraft registration as established under R12-4-502.
- G.** A towing company that obtains ownership of a watercraft pursuant to A.R.S. § 5-399.02 and this Section shall maintain the following records for a period of three years from the date the Department transferred ownership of the towed watercraft:
 - 1. The request made pursuant to A.R.S. § 5-324.
 - 2. The notification provided pursuant to A.R.S. § 5-399.
 - 3. The application for transfer of ownership pursuant to A.R.S. § 5-399.02.
 - 4. Any other documents required by the Department.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 1241, effective May 26, 2003 for a period of 180 days (Supp. 03-1). Emergency rulemaking repealed under A.R.S. § 41-1026(E) and permanent new Section made by final rulemaking at 9 A.A.R. 1613, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final exempt rulemaking at 23 A.A.R. 1034; amended by final rulemaking at 23 A.A.R. 1732, both effective August 5, 2017 (Supp. 17-2).

R12-4-528. Watercraft Checkpoints

- A.** A law enforcement agency may establish a watercraft checkpoint to ensure public safety on state waterways, to screen for unsafe or impaired watercraft operators, or to gather demographic, statistical, and compliance information related to watercraft activities.
- B.** An individual may be required to perform the following during a watercraft stop or at a watercraft checkpoint:
 - 1. Stop or halt as directed when being hailed by a peace officer or entering the established checkpoint boundary as prescribed under A.R.S. § 5-391, and
 - 2. Provide evidence of required safety equipment and registration documentation prescribed under A.R.S. Title 5, Chapter 3, Boating and Water Sports.
- C.** This Section does not limit any state peace officer's authority to conduct routine watercraft patrol efforts prescribed under A.R.S. Title 5, Chapter 3, Boating and Water Sports.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

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R12-4-529. Nonresident Boating Safety Infrastructure Fees; Proof of Payment

- A.** Before placing that watercraft on the waterways of this State, a nonresident owner of a recreational watercraft who establishes this State as the state of principal operation shall pay the applicable Nonresident Boating Safety Infrastructure Fee (NBSIF) as authorized under A.R.S. §§ 5-326 and 5-327:
1. Twelve feet and less: \$80
 2. Twelve feet one inch through sixteen feet: \$88
 3. Sixteen feet one inch through twenty feet: \$192
 4. Twenty feet one inch through twenty-six feet: \$224
 5. Twenty-six feet one inch through thirty-nine feet: \$253
 6. Thirty-nine feet one inch through sixty-four feet: \$286
 7. Sixty-four feet one inch and over: \$429
 8. For the purposes of this subsection, the length of the motorized watercraft shall be measured in the same manner prescribed under A.R.S. § 5-321(C).
- B.** The nonresident recreational watercraft owner shall carry and display proof of payment of the fee while the watercraft is underway, moored, or anchored on the waterways of this State. Acceptable proof of payment includes any one of the following:
1. A current Arizona Watercraft Certificate of Number indicating the NBSIF was paid,
 2. A current Arizona Watercraft Temporary Certificate of Number indicating the NBSIF was paid, or
 3. A current Arizona Watercraft Registration Decal indicating the NBSIF was paid.

Historical Note

Adopted effective October 22, 1976 (Supp. 76-5). Former Section R12-4-90 renumbered as Section R12-4-529 without change effective August 13, 1981 (Supp. 81-4). Repealed effective May 27, 1992 (Supp. 92-2). New Section made by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

R12-4-530. Authorized Third-party Providers; Agents

- A.** The Department may enter into a contract with a private entity to perform limited or specific services on behalf of the Department in accordance with State procurement laws and rules.
1. The Department may authorize a person to be a third-party provider. An authorized third-party provider shall meet the requirements established by the Department and shall be selected through a competitive bid process.
 2. The Department may authorize a third-party provider to perform any one or more of the following services:
 - a. Watercraft transfer.
 - b. Watercraft registration renewal.
 - c. Duplicate watercraft registration and decal.
 - d. New watercraft registration.

ARTICLE 5. BOATING AND WATER SPORTS

- B.** A person shall not engage in any business pursuant to this Section unless the Department authorizes the person to engage in the business.
- C.** The Department shall establish minimum quality standards of service and a quality assurance program for authorized third-party providers to ensure that an authorized third-party provider is complying with the minimum standards.
- D.** The Department may:
 - 1. Conduct investigations.
 - 2. Conduct audits.
 - 3. Make on-site inspections in compliance with A.R.S. § 41-1009.
 - 4. Require an authorized third-party or employees or agents of an authorized third-party be certified to perform the services prescribed in this Article.
- E.** An authorized third-party provider shall remit to the Department all fees established under R12-4-504 and R12-4-529 it collects.
 - 1. An authorized third-party provider may collect and retain a reasonable and commensurate fee for its services.
 - 2. Each authorized third-party provider that holds itself out as providing services to the public shall identify to the applicant the Department's registration fee and the nonresident boating safety infrastructure fee, when applicable, separately from any other costs.
- F.** A third-party who is authorized pursuant to this Section shall:
 - 1. Maintain records in a form and manner prescribed by the Department.
 - 2. Allow access to the records during regular business hours to authorized representatives of the Department or any law enforcement agency to ensure compliance with all applicable statutes and rules.
- G.** The Department may suspend or cancel an authorization or certification, or both, granted pursuant to this Section if the Department determines that the third-party provider or certificate holder has done any of the following:
 - 1. Made a material misrepresentation or misstatement in the application for authorization or certification.
 - 2. Has been convicted of fraud or a watercraft related felony in any state or jurisdiction of the U.S. within the ten years immediately preceding the date a criminal records check is complete.
 - 3. Has been convicted of a felony, other than a felony described in subsection (2), in any state or jurisdiction of the U.S. within the five years immediately preceding the date a criminal records check is complete.
 - 4. Violated a rule or policy adopted by the Department.
 - 5. Failed to keep and maintain records required by this Section.
 - 6. Failed to remit to the Department all fees established under R12-4-504 and R12-4-529 it collects.
 - 7. Allowed an unauthorized person to engage in any business pursuant to this Section.
- K.** If the Department has reasonable grounds to believe that a certificate holder or other person employed by an authorized third-party provider has committed a serious violation, the Department may order a summary suspension of the third provider's authorization granted pursuant to this Section pending formal suspension or cancellation proceedings. For the purposes of this subsection, "serious violation" means:
 - 1. Watercraft registration fraud.

ARTICLE 5. BOATING AND WATER SPORTS

2. Improper disclosure of personal information.
 3. Bribery.
 4. Theft.
- L.** On determining that grounds for suspension or cancellation of an authorization or certification, or both, exist, the Department shall give written notice to the third-party provider or certificate holder to appear at a hearing before the Department to show cause why the authorization or certification should not be suspended or canceled.
1. After consideration of the evidence presented at the hearing, the Department shall serve notice of the finding and order to the third-party or certificate holder.
 2. If a third-party authorization or a certification is suspended or canceled, the third-party or certificate holder may appeal the decision pursuant to A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 1732, effective August 5, 2017 (Supp. 17-2).

**TITLE 5. AMUSEMENT AND SPORTS
CHAPTER 3. BOATING AND WATER SPORTS**

5-301. Definitions

In this chapter, unless the context otherwise requires:

1. "Commercial motorized watercraft" means a motorized watercraft that carries passengers or property for a valuable consideration that is paid to the owner, charterer, operator or agent or to any other person interested in the watercraft.
2. "Commission" means the Arizona game and fish commission.
3. "Department" means the Arizona game and fish department.
4. "Documented watercraft" means any watercraft currently registered as a watercraft of the United States pursuant to 46 Code of Federal Regulations part 67.
5. "Domicile" means a person's true, fixed and permanent home and principal residence, proof of which may be demonstrated as prescribed by rules adopted by the commission.
6. "Motorboat" means any watercraft that is not more than sixty-five feet in length and that is propelled by machinery whether or not such machinery is the principal source of propulsion.
7. "Motorized watercraft" means any watercraft that is propelled by machinery whether or not the machinery is the principal source of propulsion.
8. "Nonresident" means a citizen of the United States or an alien person who is not domiciled in this state and who is not a resident as defined in this section.
9. "Operate" means to operate or be in actual physical control of a watercraft while on public waters.
10. "Operator" means a person who operates or is in actual physical control of a watercraft.
11. "Person" includes any individual, firm, corporation, partnership or association, and any agent, assignee, trustee, executor, receiver or representative thereof.
12. "Public waters" means any body of water that is publicly owned or that the public is permitted to use without permission of the owner upon which a motorized watercraft can be navigated, including that part of waters that is common to interstate boundaries and that is within the boundaries of this state.
13. "Resident" means a person who is either:
 - (a) A member of the armed forces of the United States on active duty and stationed in this state for a period of thirty days immediately before the date of application for a watercraft decal.
 - (b) A member of the armed forces of the United States on active duty and stationed in another state or another country and who lists this state as that member's home of record at the time of an application for a watercraft decal.
 - (c) Domiciled in this state for at least six consecutive months immediately before the date of the application for a watercraft decal and who does not claim residency for any purpose in any other state or country.
14. "Revocation" means invalidating the certificate of number, numbers and annual validation decals issued by the department to a watercraft and prohibiting the operation of the watercraft on the waters of this state during a period of noncompliance with this chapter.
15. "Sailboard" means any board of less than fifteen feet in length which is designed to be propelled by wind action upon a sail for navigation on the water by a person operating the board.
16. "Special anchorage area" means an area set aside and under the control of a federal, state or local governmental agency, or by a duly authorized marina operator or concessionaire for the mooring, anchoring or docking of watercraft.
17. "State of principal operation" means the state where a watercraft is primarily used, navigated or employed.
18. "Underway" means a watercraft that is not at anchor, is not made fast to the shore or is not aground.
19. "Undocumented watercraft" means any watercraft which does not have and is not required to have a valid marine document as a watercraft of the United States.
20. "Wakeless speed" means a speed that does not cause the watercraft to create a wake, but in no case in excess of five miles per hour.
21. "Watercraft" means any boat designed to be propelled by machinery, oars, paddles or wind action upon a sail for navigation on the water, or as may be defined by rule of the commission.
22. "Waterway" means any body of water, public or private, upon which a watercraft can be navigated.

5-302. Application of chapter

- A. This chapter applies to all watercraft operating on all of the waterways of this state, including that part of waters that is common to interstate boundaries and that is within the boundaries of this state, excluding vessels owned by agencies of the federal government in performance of their official duties.
- B. Section 5-391, subsections G and H and sections 5-392 and 5-393 apply to all watercraft in this state, whether or not operating on waterways of this state, and includes watercraft operating on waterways that are part of water

that is common to interstate boundaries and that is within the boundaries of this state.

ARTICLE 2. POWERS AND DUTIES

5-311. Powers and duties of the commission

A. The commission may:

1. Make rules and regulations required to carry out in the most effective manner all the provisions of this chapter.
2. Modify the equipment requirements in conformity with the provisions of the federal navigation laws or with the navigation regulations promulgated by the United States coast guard.
3. Prescribe additional equipment requirements not in conflict with federal navigation laws or regulations.
4. Provide for a uniform waterway marking system and establish, operate and maintain aids to navigation and regulatory markers on the waters of this state.
5. Make regulations for the registration and operation of watercraft.
6. Prescribe regulations for the issuance of permits for motor boat races, regattas or other watercraft events.
7. Administer the law enforcement and boating safety program on the state level, and accept federal grants for the purpose of boating safety and related enforcement.

B. Regulations established under this section shall not be in conflict with those prescribed by the United States coast guard.

5-321. Numbering; registration fees; exemption from taxation; penalty; procedures

A. Except as provided in section 5-322, the owner of each motorized watercraft requiring numbering by this state shall file an application for a registration number with the department, or its agent, on forms approved by the department. Except as provided by rule adopted by the commission, the application shall be signed by the owner of the motorized watercraft and shall be accompanied by a registration fee. After the effective date of this amendment to this section, the commission shall establish by rule a registration fee for each motorized watercraft requiring numbering by this state.

B. Pursuant to article IX, section 16, Constitution of Arizona, watercraft are exempt from ad valorem property tax and from license taxes in lieu of property tax.

C. The length of the motorized watercraft shall be measured from the most forward part of the bow excluding the bowsprit or jibboom, over the centerline to the rearmost part of the transom excluding sheer, outboard motor, rudder, handles or other attachments.

D. The commission may assess an additional registration fee, to be collected at the same time and in the same manner as the registration fee imposed by subsection A of this section. The amount of the additional fee shall be determined by the commission and may be imposed in different amounts with respect to resident and nonresident owners. An additional registration fee under this subsection is to be used solely for the purpose of the lower Colorado river multispecies conservation program under section 48-3713.03.

E. On receipt of the application in approved form with the applicable fees, the department or its agent shall enter the application on the records of its office and issue to the applicant two current annual decals and a certificate of number stating the number issued to the watercraft and the name and address of the owner. The owner shall display the assigned number and the current annual decals in such manner as may be prescribed by rules of the commission. The number and decals shall be maintained in legible condition. The certificate of number or commission approved proof of valid certificate of number, except as provided in section 5-371, shall be available at all times for inspection by a peace officer whenever the watercraft is in operation. No number issued by another state or the United States coast guard, unless granted exemption or exception pursuant to this chapter, shall be displayed on the watercraft.

F. No person may operate a motorized watercraft on the waterways of this state unless the watercraft displays the assigned number and current annual decals or the person is in possession of a valid thirty-day temporary registration as prescribed by this article.

G. No motorized watercraft shall be purchased, sold or otherwise transferred without assignment by the owner of the current numbering certificate or other documentation as may be prescribed by rules of the commission. Within fifteen days after such transfer, the person to whom such transfer is made shall make application to the department to have the motorized watercraft registered in the person's name by the department, for which the department shall charge a transfer fee as prescribed in rule by the commission. The department shall not issue or transfer a numbering certificate for a motorized watercraft to a person who is subject to the use tax under title 42, chapter 5, article 4 unless the applicable tax has been paid as shown by a receipt from the collecting officer. Persons doing business as marine dealers and licensed as such by this state are not required to register in their name any

watercraft in their possession that may be offered for resale.

- H. In the event of the loss or destruction of the certificate of number or annual decal, the department shall issue a duplicate to the owner on payment of a fee as prescribed in rule by the commission.
- I. The department may issue any certificate of number directly or may authorize any person to act as agent for the issuance of the certificate of number in conformity with this chapter and with any rules of the commission. An agent that contracts with the commission to renew certificates of number by telecommunication may impose additional fees for the services as provided in the contract.
- J. The owner shall furnish to the department notice of the transfer of all or any part of the owner's interest other than the creation of a security interest in a motorized watercraft numbered in this state pursuant to this chapter or of the destruction or abandonment of such watercraft within fifteen days. Such transfer, destruction or abandonment shall terminate the certificate of number of such watercraft, except that in the case of a transfer of a part interest that does not affect the owner's right to operate such watercraft, the transfer shall not terminate the certificate of number.
- K. Any holder of a certificate of number shall notify the department within fifteen days if the holder's address no longer conforms to the address appearing on the certificate and, as a part of such notification, shall furnish the department with the holder's new address. The commission may provide in its rules for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.
- L. On renewal of any motorized watercraft registration that has not been renewed by the current expiration date, the department shall assess a penalty unless the watercraft ownership has been transferred and the watercraft was not registered subsequent to the expiration date. The commission shall establish the penalty by rule. If more than twelve months have lapsed since the expiration date of the last registration or renewal, the penalty and back fees are waived.

5-321.01. Staggered watercraft registration; rules

- A. The commission shall establish a system of staggered registration on a monthly basis in order to distribute the work of registering watercraft as uniformly as practicable throughout the twelve months of the calendar year.
- B. All watercraft registrations provided for in this article expire in accordance with the schedules established by the commission. The commission may set the number of renewal periods within a month from one each month to one each day depending on which system is most economical and best accommodates the public.
- C. The commission, in order to initiate the staggered registration system, may register a watercraft for a period of greater or less than twelve months up to a period of thirty-six months. If a registration period is set for a period other than twelve months the commission may prorate the registration fee.
- D. The commission shall adopt rules necessary to accomplish the purposes of this section.

5-322. Motorized watercraft to be numbered; exceptions

- A. All motorized watercraft whether underway, moored or anchored on the waters within the boundaries of the state shall be numbered in accordance with this chapter or rules of the commission in accordance with the federally approved numbering system except:
 - 1. Foreign watercraft temporarily using the waters of the state.
 - 2. Military or public vessels of the United States, except recreational type public vessels.
 - 3. Watercraft used solely as lifeboats.
 - 4. Undocumented watercraft operating under a valid temporary certificate issued pursuant to rules adopted by the commission.
 - 5. Documented watercraft numbered in accordance with the regulations of the United States coast guard.
- B. Motorized watercraft owned and operated exclusively by the state or by any political subdivision of the state shall be numbered, but no registration fee shall be paid on the watercraft.
- C. All owners of motorized watercraft when in the course of interstate operation displaying a current and valid number issued under an approved federal numbering system of the United States coast guard, a state, the Commonwealth of Puerto Rico, the Virgin Islands, Guam or the District of Columbia shall register such watercraft with the department before the expiration of the reciprocity period prescribed by rules of the commission.
- D. All motorized watercraft, when in the course of interstate operation and not required to be numbered in their state of principal operation, shall comply with the requirements of subsection C of this section.
- E. When this state becomes the new state of principal operation of a motorized watercraft displaying a current number issued under a federally approved numbering system, the validity of such number shall be recognized for a period of ninety days. On expiration of the ninety-day period and before any subsequent use, the owner shall number

any motorized watercraft pursuant to section 5-321.

- F. Each dealer or manufacturer in this state engaged in the sale of motorized watercraft using the watercraft for demonstration shall obtain one or more dealer watercraft certificates of number with the current validating decals. Applications, fees for each certificate of number and accompanying current decals, renewal and display of certificates of number shall be as prescribed in this chapter or by rules of the commission.

5-326. Nonresidents; registration; payment of fees; exemption

- A. A nonresident owner of a watercraft who establishes this state as the state of principal operation shall register and number that watercraft pursuant to this article and pay an additional boating safety infrastructure fee assessed pursuant to section 5-327 before placing that watercraft on the waterways of this state.
- B. A member of the armed forces of the United States who is on active duty and stationed in this state for a period of at least thirty days immediately before applying for watercraft registration is exempt from this section.
- C. The owner shall carry and display proof of payment of the fee required by this section in a manner prescribed by the commission while the watercraft is underway, moored or anchored on the waterways of this state.
- D. Subsection A of this section does not apply to nonrecreational or commercial motorized watercraft.

5-327. Nonresident boating safety infrastructure fees

- A. In accordance with section 5-326, the commission shall assess a nonresident boating safety infrastructure fee for each watercraft registered in this state by a nonresident as defined in section 5-301. The fees assessed pursuant to this section shall be paid in addition to the fees required pursuant to section 5-321.
- B. For the purposes of section 5-326, subsection A, the commission shall establish nonresident boating safety infrastructure fees. After the effective date of this amendment to this section, the commission shall establish by rule a nonresident boating safety infrastructure fee for each watercraft registered in this state by a nonresident.
- C. The length of the motorized watercraft shall be measured in the same manner prescribed in section 5-321, subsection C.
- D. Unless the person or watercraft qualifies for an exemption pursuant to section 5-326, no person who is subject to this section shall operate or grant permission to operate a watercraft within the boundaries of this state unless that watercraft displays a valid nonresident boating safety infrastructure decal in conformance with the rules adopted pursuant to section 5-326.

5-336. Muffling devices

- A. Every motor driven watercraft shall at all times be equipped with effective equipment, in good working order and in constant operation, to prevent excessive or unusual noise except as provided in subsection C.
- B. It is not the intent of this section to prohibit the use of any type of exhaust system or exhaust device, including those systems and devices which do not discharge water with the exhaust gases, if such system or device complies with subsection A of this section.
- C. All watercraft actually competing in a regatta, boat race or official trials for speed records, and within the time limits authorized by the sanctioning body of such event are exempt from this section. Permits designating place and time limits are required and shall be issued by the department prior to the testing of watercraft on the water when sufficient evidence is provided by the applicant that such watercraft is actually entered in an event sanctioned by a national or regional organization having jurisdiction over the event.

5-350. Personal watercraft; requirements for operation; definition

- A. A person shall not operate a personal watercraft unless each person aboard is wearing a wearable personal flotation device that is approved by the United States coast guard.
- B. A person who operates a personal watercraft that is equipped by the manufacturer with a lanyard type engine cutoff switch shall attach the lanyard to his body, clothing or personal flotation device as appropriate for the specific watercraft.
- C. A person shall not operate or knowingly allow another person to operate a personal watercraft under his ownership or control in a reckless or negligent manner endangering the life or property of another person. Prima facie evidence of reckless operation exists if the person commits two or more of the following acts simultaneously:
 - 1. Operates the personal watercraft within a zone of proximity to another watercraft closer than sixty feet unless both are leaving a flat wake or are traveling at a speed of five nautical miles per hour or less.
 - 2. Operates the personal watercraft within the vicinity of a motorboat in a manner that obstructs the visibility of either operator.
 - 3. Heads into the wake of a motorboat that is within a zone of proximity closer than sixty feet and causes one-

- half or more of the length of the personal watercraft to leave the water.
4. Within a zone of proximity to another watercraft closer than sixty feet, maneuvers quickly, turns sharply or swerves, unless the maneuver is necessary to avoid a collision.
- D. If equipped by the manufacturer, a person shall not operate a personal watercraft without a functioning spring-loaded throttle mechanism that immediately returns the engine to an idle speed on release of the operator's hand from the control or without any other engine cutoff feature that is installed by the manufacturer.
 - E. A personal watercraft shall not be loaded and operated with passengers or cargo beyond its safe carrying capacity or the manufacturer's recommended limits.
 - F. A person who owns, leases or hires a personal watercraft or who has charge or control over a personal watercraft shall not authorize or knowingly permit the personal watercraft to be operated in violation of this section.
 - G. This section does not apply to a performer who engages in a professional exhibition or to a person who participates in an officially sanctioned regatta, race, marine parade, tournament or exhibition.
 - H. For purposes of this section, "personal watercraft" means a watercraft that is less than sixteen feet long, propelled by machinery powering a water jet pump and designed to be operated by a person who sits, stands or kneels on rather than sitting or standing inside the watercraft.

17-255.01. Aquatic invasive species program; powers

- A. The director may establish and maintain an aquatic invasive species program.
- B. The director may issue orders:
 1. Establishing a list of aquatic invasive species for this state.
 2. Establishing a list of waters or locations where aquatic invasive species are present and take steps that are necessary to eradicate, abate or prevent the spread of aquatic invasive species within or from those bodies of water.
 3. Establishing mandatory conditions as provided in subsection C of this section on the movement of watercraft, vehicles, conveyances or other equipment from waters or locations where aquatic invasive species are present to other waters.
- C. If the presence of an aquatic invasive species is suspected or documented in this state, the director or an authorized employee or agent of the department may take one or more of the following actions to abate or eliminate the species:
 1. Authorize and establish lawful inspections of watercraft, vehicles, conveyances and other equipment to locate the aquatic invasive species.
 2. Order any person with an aquatic invasive species in or on the person's watercraft, vehicle, conveyance or other equipment to decontaminate the watercraft, vehicle, conveyance or equipment in a manner prescribed by rule. Notwithstanding paragraph 3 of this subsection, mandatory on-site decontamination shall not be required at a location where an on-site cleaning station charges a fee.
 3. Require any person with a watercraft, vehicle, conveyance or other equipment in waters or locations where an aquatic invasive species is present to decontaminate the property before moving it to any other waters in this state or any other location in this state where aquatic invasive species could thrive.
- D. An order issued under subsection B or C of this section is exempt from title 41, chapter 6, article 3, except that the director shall promptly file a copy of the order with the secretary of state for publication in the Arizona administrative register pursuant to section 41-1013.

C-2

BOARD OF PSYCHOLOGIST EXAMINERS

Title 4, Chapter 26

Amend: R4-26-101, R4-26-106, R4-26-108, R4-26-109, R4-26-110, R4-26-111, R4-26-201, R4-26-203, R4-26-203.01, R4-26-203.02, R4-26-203.03, R4-26-203.04, R4-26-204, R4-26-205, R4-26-206, R4-26-207, R4-26-210

Repeal: R4-26-104, R4-26-105



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: October 4, 2022

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

FROM: Council Staff

DATE: September 14, 2022

SUBJECT: BOARD OF PSYCHOLOGIST EXAMINERS
Title 4, Chapter 26, Articles 1-2

Amend: R4-26-101, R4-26-106, R4-26-108, R4-26-109, R4-26-110,
R4-26-111, R4-26-201, R4-26-203, R4-26-203.01, R4-26-203.02,
R4-26-203.03, R4-26-203.04, R4-26-205, R4-26-206, R4-26-207,
R4-26-210

Repeal: R4-26-104, R4-26-105

Summary:

This regular rulemaking from the Board of Psychologist Examiners (Board) seeks to amend sixteen (16) rules and repeal two rules in Title 4, Chapter 26, Articles 1-2, related to General Provisions and Licensure. In this rulemaking, the Board intends to delete the fee for issuance of a license, reduce the circumstances under which the Board charges for services it provides, add statutory requirements, and clarify references and provisions to make the rules consistent with statute, industry and Board practice.

The Board received an exception from the rulemaking moratorium to initiate this rulemaking on March 4, 2022 and final approval to submit it to the Council on July 18, 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 for these rules.

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

No, the Board indicates the 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?**

No, the Board indicates they did not review or rely on any study in conducting this rulemaking.

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

In this rulemaking, the Board states that it is adopting rules that will align with statutory mandates and industry standards.

The rule changes include the following which are identified in the Board's economic, small business, and consumer impact statement (EIS):

- Deleting the fee for issuance of a license;
- Reducing the circumstances under which the Board charges for services it provides;
- Clarifying statutory cross references;
- Clarifying that supervision through telepractice includes use of visual technology;
- Removing references from the standard for a complete application packet;
- Adding the statutory requirement that an applicant provide a valid fingerprint clearance card;
- Clarifying provisions regarding application to take the national examination before completing supervised professional experience;
- Clarifying that a temporary license holder is required to take the national examination;
- Clarifying that provisions regarding the national examination apply to temporary license holders;
- Amending continuing education topics required of all licensees; and
- Placing standards for written training plan required for supervised postdoctoral professional experience in rule rather than substantive policy statement.

The Board states that these changes are needed to comply with statute and will have minimal economic impact. The requirement, and associated cost, to obtain a fingerprint clearance card results from statute (*See* A.R.S. § 32-2063(A)(14)) rather than rule.

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 Board concludes that this rulemaking is required by state statute and costs incurred are due to the statute rather than the rule. The Board also states that the minimal costs incurred are by the Board, not other agencies nor the psychologists themselves.

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

Key stakeholders are the Board, psychologist licensees, and applicants.

The Board states that applicants are impacted by the fingerprint clearance card fee, which is required by statute rather than the rule itself.

The Board states that the rule changes eliminate the license issuance fees which reduces the regulatory burden for licensees and applicants. This does have a negative impact on the state general fund of approximately \$1,584/year.

The rulemaking has no impact on political subdivisions or the general public.

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

No, the Board indicates the only change made between the proposed and final rulemaking was expanding the examples of diversity listed in R4-26-207(B)(3) to include “ethnicity, language, or culture.” The Board indicates this change was not substantial under the standards of A.R.S. § 41-1025(B).

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

Yes, the Board indicates they received one public comment requesting the examples of diversity listed in R4-26-207(B)(3) be expanded to include “ethnicity, language, or culture,” and the Board has implemented that change.

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

Yes, the Board indicates the rules require a license and the Board complies with A.R.S. § 41-1037 pursuant to A.R.S. § 41-1037(A)(2) because the Board issues individual licenses specifically authorized by state statute (A.R.S. § 32-2071).

10. 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 Board indicates there are no corresponding federal laws.

11. Conclusion

The Board seeks to amend sixteen rules and repeal two rules in Title 4, Chapter 26, Articles 1-2 to ensure the Board's rules are consistent with statute and industry and Board practice. The Board is seeking the standard 60-day delay effective date for this rulemaking. Council staff recommends approval of this rulemaking.



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DOUGLAS A. DUCEY
Governor

HEIDI HERBST PAAKKONEN
Executive Director

July 19, 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 4. Professions and Occupations; Chapter 26. Board of Psychologist Examiners;
Articles 1 and 2**

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:

- A. Close of record date: The rulemaking record was closed on July 15, 2022, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).

An exemption to Executive Order 2022-01 was provided by Tony Hunter, of the Governor's Office, in an e-mail dated March 4, 2022. Authorization to submit the rule package to GRRC for its review and approval was provided by Brian Norman, of the Governor's office, by an e-mail dated July 18, 2022.
- 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 does not establish a new fee.
- D. Fee increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is not requested.
- F. Certification regarding studies: I certify that the preamble accurately discloses 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 full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.
- H. List of documents enclosed:
 - 1. Cover letter signed by the Executive Director;
 - 2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
 - 3. Economic, Small Business, and Consumer Impact Statement

Regards,

Heidi Herbst Paakkonen, MPA, Executive Director

NOTICE OF FINAL RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

PREAMBLE

<u>1. Articles, Parts, and Sections Affected</u>	<u>Rulemaking Action</u>
R4-26-101	Amend
R4-26-104	Repeal
R4-26-105	Repeal
R4-26-106	Amend
R4-26-108	Amend
R4-26-109	Amend
R4-26-110	Amend
R4-26-111	Amend
R4-26-201	Amend
R4-26-203	Amend
R4-26-203.01	Amend
R4-26-203.02	Amend
R4-26-203.03	Amend
R4-26-203.04	Amend
R4-26-204	Amend
R4-26-205	Amend
R4-26-206	Amend
R4-26-207	Amend
R4-26-210	Amend

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

Authorizing statute: A.R.S. § 32-2063(A)(9)

Implementing statute: A.R.S. §§ 32-2063(A)(3), (A)(12) and(A)(14), 32-2067, 32-2071, 32-2072, 32-2073, and 32-2074

3. The effective date for the rules:

As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of 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. Citation to all related notices published in the Register to include 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. 775, April 15, 2022

Notice of Proposed Rulemaking: 28 A.A.R. 745, April 15, 2022

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

Name: Heidi Herbst Paakkonen

Address: Board of Psychologist Examiners

1740 W Adams Street, Suite 3403

Phoenix, AZ 85007

Telephone: (602) 542-3018

Fax: (602) 542-8279

E-mail: Heidi.paakkonen@psychboard.az.gov

Web site: www.psychboard.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 making minor changes needed to ensure the Board's rules are consistent with statute and industry and Board practice. The changes include:

- Deleting the fee for issuance of a license;
- Reducing the circumstances under which the Board charges for services it provides;
- Clarifying statutory cross references;
- Clarifying that supervision through telepractice includes use of visual technology;
- Removing references from the standard for a complete application packet;
- Adding the statutory requirement that an applicant provide a valid fingerprint clearance card;
- Clarifying provisions regarding application to take the national examination before completing supervised professional experience;
- Clarifying that a temporary license holder is required to take the national examination;

- Clarifying that provisions regarding the national examination apply to temporary license holders;
- Amending continuing education topics required of all licensees; and
- Placing standards for written training plan required for supervised postdoctoral professional experience in rule rather than substantive policy statement.

An exemption to Executive Order 2022-01 was provided by Tony Hunter, of the Governor’s Office, in an e-mail dated March 4, 2022. Authorization to submit the rule package to GRRC for its review and approval was provided by Brian Norman by an e-mail dated July 18, 2022.

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

The Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

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

Not applicable

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

The minor changes in this rulemaking will have minimal economic impact. The requirement, and associated cost, to obtain a fingerprint clearance card results from statute (See A.R.S. § 32-2063(A)(14)) rather than rule.

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

The only change made between the proposed and final rulemakings is described in item 11.

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

The Board received one public comment. Dr. Marisa Menchola of Banner University Medicine asked that the examples of diversity listed in R4-26-207(B)(3) be expanded to include “ethnicity, language, or culture.” The Board appreciates Dr. Menchola’s comment and made the requested change. The change is not substantial under the standards at A.R.S. § 41-1025(B). The use of the word “including” in R4-26-207(B)(3) provided notice the list in the proposed rulemaking was not exhaustive. No one attended the oral proceeding on May 20, 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 Board does not issue general permits. Rather, the Board issues individual licenses as required by the Board's statutes to each person that is qualified by statute (See A.R.S. § 32-2071) and rule.

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

Federal law does not apply to the subject of this rulemaking.

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

No analysis was submitted.

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

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:

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

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS
ARTICLE 1. GENERAL PROVISIONS

Section

- R4-26-101. Definitions
- R4-26-104. ~~Committees~~ Repealed
- R4-26-105. ~~Board Records~~ Repealed
- R4-26-106. Client or Patient Records
- R4-26-108. Fees and Charges
- R4-26-109. General Provisions Regarding Telepractice
- R4-26-110. Providing Psychological Service by Telepractice
- R4-26-111. Providing Supervision through Telepractice

ARTICLE 2. LICENSURE

Section

- R4-26-201. Application Deadline
- R4-26-203. Application for Initial License
 - R4-26-203.01. Application for Licensure by Credential
 - R4-26-203.02. Application to Take National Examination before Completing Supervised Professional Experience Required for Licensure
 - R4-26-203.03. Reapplication for License; Applying Anew
 - R4-26-203.04. Temporary License under A.R.S. § 32-2073(B)
- R4-26-204. Examinations
- R4-26-205. Renewal of License
- R4-26-206. Reinstatement of License from Inactive to Active Status; Cancellation of License
- R4-26-207. Continuing Education
- R4-26-210. Supervised Professional Experience

ARTICLE 1. GENERAL PROVISIONS

R4-26-101. Definitions

A. The definitions in A.R.S. § 32-2061 apply to this Chapter.

B. Additionally, in this Chapter:

1. “Additional examination” means an examination administered by the Board to determine the competency of an applicant and may include questions about the applicant’s knowledge and application of Arizona law, the practice of psychology, ethical conduct, and psychological assessment and treatment practices.
2. “Administrative completeness review” means the Board’s process for determining that an applicant has provided all of the information and documents required by the Board to determine whether to grant a license to the applicant.
3. “Advertising” means any media used to disseminate information regarding the qualifications of a psychologist or to solicit clients or patients for psychological services, regardless of whether the psychologist pays for the advertising. Methods of advertising include a published statement or announcement, directory listing, business card, personal resume, brochure, or any electronic communication conveying the psychologist’s professional qualifications or promoting use of the psychologist’s professional services.
4. “Applicant” means an individual requesting licensure, renewal, or approval from the Board.
5. “Application packet” means the forms and documents the Board requires an applicant to submit to the Board.
6. “Applied psychology,” as used in A.R.S. § 32-2071(A), means the practice of psychology in the area of health service delivery. The Board shall consider education and training in applied psychology as qualification for licensure only if the education and training meet the standards specified in A.R.S. § 32-2071.
7. “Case,” in the context of R4-26-106 (G), means a legal cause of action instituted before an administrative tribunal or in a judicial forum that relates to a psychologist’s practice of psychology.
8. “Case conference” means a meeting that includes the discussion of a particular client or patient or case that is related to the practice of psychology.
9. “Client or patient record” means “adequate records” as defined in A.R.S. § 32-2061(2), “medical records” as defined in A.R.S. § 12-2291 (6), and all records pertaining to assessment, evaluation, consultation, intervention, treatment, or the provision of psychological services in any form or by any medium.

10. "Complaint Screening Committee" means the committee of the Board established under A.R.S. § 32-2081 (H) to conduct an initial review of ~~all~~ complaints.
11. "Confidential record" means:
 - a. Minutes of an executive session of the Board;
 - b. A record that is classified as confidential by a statute or rule applicable to the Board;
 - c. All materials relating to an investigation by the Board, including a complaint, response, client or patient record, witness statement, investigative report, and any other information relating to a client's or patient's diagnosis, treatment, or personal or family life; and
 - d. The following regarding an applicant or licensee:
 - i. College or university transcripts;
 - ii. Home address, home telephone number, and e-mail address;
 - iii. Examination scores;
 - iv. Date of birth v. Place of birth;
 - vi. Social Security number; and
 - vii. Candidate identification number for the national examination required under A.R.S. § 32-2072(A).
12. "Credentialing agency" means the Association of State and Provincial Psychology Boards, the National Register of Health Service Providers in Psychology, or the American Board of Professional Psychology.
13. "Day" means a calendar day except in A.R.S. § 32-2075(A)(4), "day" means a total of eight hours in providing psychological services regardless of the number of calendar days over which the hours are accumulated.
14. "Diplomate or specialist" means a status bestowed on a person by the American Board of Professional Psychology after successful completion of the work and examinations required.
15. "Directly available," as used in A.R.S. § 32-2071 (F)(2), means immediately available in person or by telephone or electronic transmission.
16. "Disaster," as used in A.R.S. § 32-2075(A)(4), means a contingency or situation for which the governor declares a state of emergency under the authority provided at A.R.S. § 35-192. The Board acknowledges any state of emergency declared by the governor or determined by the Board.
17. "Dissertation" means a document prepared as part of a graduate doctoral program that includes, at a minimum, separate sections that:
 - a. Review the literature on the psychology topic being investigated and state each research question and hypothesis under investigation;

- b. Describe the method or procedure used to investigate each research question or hypothesis;
 - c. Describe and summarize the findings and results of the investigation;
 - d. Discuss the findings and compare them to the relevant literature presented in the literature review section; and
 - e. List the references used in the various sections of the dissertation, a majority of which are either journals of the American Psychological Association, Psychological Abstracts, or classified as a psychology subject by the Library of Congress.
18. "Fellow" means a status bestowed on a person by a psychology association or society.
 19. "Gross negligence" means an extreme departure from the ordinary standard of care.
 20. "Internship training program" means the supervised professional experience required in A.R.S. § 32-2071 (F).
 21. "Last client or patient activity," as used in R4-26-106, means the last date a particular client or patient received direct clinical contact from the psychologist retaining the client's or patient's record.
 22. "License period" means:
 - a. For a licensee who holds an odd-numbered license, the two years between the first day of the month after the licensee's birth month of one odd-numbered year and the last day of the licensee's birth month of the next odd-numbered year; and
 - b. For a licensee who holds an even-numbered license, the two years between the first day of the month after the licensee's birth month of one even-numbered year and the last day of the licensee's birth month of the next even-numbered year.
 23. "National examination" means Parts 1 and 2 of the Examination for Professional Practice in Psychology provided by the Association of State and Provincial Psychology Boards.
 24. "Party" means the Board, an applicant, a licensee, or the state.
 25. "Practice monitor," as used in R4-26-310, means a Board-approved licensed psychologist who monitors or oversees the remediation of the practice of another psychologist as part of a disciplinary process.
 26. "Primarily psychological," in the context of A.R.S. § 32-2071(A)(6), means subject matter that covers the practice of psychology as defined in A.R.S. § 32-2061 ~~(9)~~.
 27. "Psychologist on staff," as used in A.R.S. § 32-2071(F)(2), means a psychologist who is designated by the staff psychologist specified in A.R.S. § 32-2071(F)(1) to fulfill the responsibilities of a supervising psychologist in the training program.
 28. "Psychometric testing" means measuring cognitive and emotional processes and learning through the administration of psychological tests.

29. "Raw test data" means test scores, client or patient responses to test questions or stimuli, and notes and recordings concerning client or patient statements and behavior during a psychologist's assessment and evaluation.
30. "Regulatory jurisdiction" means a state or territory of the U.S., the District of Columbia, or a foreign country with authority to grant or deny entry into a profession or occupation.
31. "Renewal year" means:
 - a. Each odd-numbered year for a licensee who holds an odd-numbered license, and
 - b. Each even-numbered year for a licensee who holds an even-numbered license.
32. "Retired," as used in A.R.S. § 32-2073 (G), means a psychologist has stopped practicing psychology, as defined in A.R.S. § 32-2061 (9).
33. "Stipend" means a fee paid to a supervisee that is not based on productivity or revenue generated.
34. "Substantive review" means the Board's process for determining whether an applicant meets the requirements of A.R.S. § 32-2071 through § 32-2076 and this Chapter.
35. "Successfully completing," as used in A.R.S. § 32-2071(A)(4), means receiving a passing grade in a course from an institution of higher education.
36. "Supervision," as used in R4-26-310, means review and oversight of the professional work of a psychologist by a Board-approved licensed psychologist as part of a disciplinary process.
37. "Supervise" means to control, oversee, and review the activities of an employee, intern, trainee, or resident who provides psychological services.
38. "Supervisor," as referenced in A.R.S. § 32-2071(F)(2), means an individual who is:
 - a. Licensed or registered as a psychologist at the independent level in the regulatory jurisdiction in which the supervision occurs,
 - b. On staff as a supervisor with the training program for which supervision is provided, and
 - c. Directly available to the supervisee in case of an emergency or ensures another supervisor is directly available to the supervisee.
39. "Year," as used in A.R.S. § 32-2075(A)(4) means a calendar year.

R4-26-104. Committees Repealed

- ~~A. As permitted under A.R.S. § 32-2064(B), the Board chairperson may appoint Board committees to assist the Board to fulfill the Board's responsibilities.~~
- ~~B. The Board may appoint consulting committees to conduct investigations and make recommendations to the Board concerning official actions.~~

R4-26-105. Board Records Repealed

- ~~A. A person may view public records in the Board office only during business hours, which are Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding holidays.~~
- ~~B. All Board records are open to public inspection and copying except confidential records as defined in R4-26-101 or as otherwise provided by law.~~

R4-26-106. Client or Patient Records

- A. A psychologist shall not condition release of a client or patient record on payment for services by the client, patient, or a third party.
- B. Except as provided in subsection (C), a psychologist shall, with a client's or patient's written consent, provide access to or a copy of the client's or patient's record, including raw test data and other information as provided by law to the client or patient or the client's or patient's health care decision maker unless the release violates copyright or other laws or violates one of the standards incorporated by reference at R4-26-301.
- C. A psychologist may deny a request to provide access to or a copy of a client's or patient's record if the psychologist determines:
 - 1. Access by the client or patient is reasonably likely to endanger the life or physical safety of the client or patient or another person;
 - 2. The record makes reference to a person other than a health professional and access by the client or patient or the client's or patient's health care decision maker is reasonably likely to cause substantial harm to that other person;
 - 3. Access by the client's or patient's health care decision maker is reasonably likely to cause substantial harm to the client or patient or another person;
 - 4. Access by the client or patient or the client's or patient's health care decision maker will reveal information obtained under a promise of confidentiality with someone other than a health professional and access is reasonably likely to reveal the source of the information; or
 - 5. Access by the client or patient or the client's or patient's health care decision maker may result in misuse or misrepresentation of the information and potentially harm the client or patient.
- D. Without a client's or patient's consent, a psychologist shall release the client's or patient's raw test data only to the extent required by law or under court order compelling production.
- E. A psychologist shall retain all client or patient records under the psychologist's control, including records of a client or patient who died, for at least six years from the date of the last client or patient activity. If a client or patient is a minor, the psychologist shall retain all client or patient records for at

least three years past the client's or patient's 18th birthday or six years from the date of the last client or patient activity, whichever is longer.

- F. Audio or video ~~tapes~~ recordings created primarily for training or supervisory purposes are exempt from the requirement of subsection (E).
- G. A psychologist who is notified by the Board or municipal, state, or federal officials of an investigation or pending case shall retain all records relating to that investigation or case until the psychologist receives written notice that the investigation is completed, the case is closed, or the matter has been fully adjudicated.
- H. The provisions of this Section apply to all psychologists including a psychologist who is on inactive status under A.R.S. § 32-2073 (G).
- I. A psychologist may retain client or patient records in electronic form. The psychologist shall ensure that client or patient records in electronic form are legible, stored securely, and an electronic backup copy is maintained.

R4-26-108. Fees and Charges

- A. As specifically authorized by A.R.S. § 32-2067(A), the Board establishes and shall collect the following fees:
 - 1. Application for an active license to practice psychology: \$350. If the applicant applies through the Psychology Licensure Universal System of the Association of State and Provincial Psychology Boards, the Board shall ensure the ASPPB receives the applicable portion of the fee;
 - 2. Application for a temporary license under A.R.S. § 32-2073(B): \$200
 - 3. Reapplication for an active license: \$200;
 - 4. ~~Issuance of an initial active or temporary license (prorated, as applicable): \$500;~~
 - 5-4. Duplicate license: \$25;
 - 6-5. Biennial renewal of an active license: \$500;
 - 7-6. Biennial renewal of an inactive license: \$85;
 - 8-7. Reinstatement of an active or inactive license: \$200; and
 - 9-8. Delinquent compliance with continuing education requirements: \$200.
- B. Under the specific authority provided by A.R.S. § 36-3606(A)(3), the Board establishes and shall collect the following fee to register as an out-of-state health care provider of telehealth services: \$600.
- C. As specifically authorized by A.R.S. § 32-2067(A), the Board establishes ~~and shall collect~~ the following charges for the services provided. The specified charge is not applicable if the Board's

executive director determines the requestor demonstrates the data will be used for a non-commercial purpose or the data are obtained from the Board's online directory:

- ~~1. Duplicate renewal receipt: \$5;~~
- ~~2. Copy of statutes and rules: \$5;~~
- ~~3. Verification of a license: \$2;~~
- ~~4. Audio recording of a Board or Committee meeting: \$10;~~
- ~~5.1. Electronic medium containing the name and address of each licensee: \$.05 per name;~~
- ~~6.2. Customized electronic medium containing the name and address of each current licensee: \$.25 per name;~~
- ~~7.3. Customized electronic medium containing additional, non-confidential, licensee information: \$.35 per name; and~~
- ~~8.4. Copies of Board records, documents, letters, minutes, applications, files, and policy statements: \$.25 per page.~~

D. Except as provided by law, including A.R.S. § 41-1077, the fees listed in subsections (A) and (B) are not refundable.

R4-26-109. General Provisions Regarding Telepractice

- A.** Except as otherwise provided by law, a licensee who provides psychological service or supervision by telepractice to a client or patient or supervisee located outside Arizona shall comply with not only A.R.S. ~~Title 32, Chapter 19.1, § 36-3602~~ and this Chapter but also the laws and rules of the jurisdiction in which the client or patient or supervisee is located.
- B.** Before providing psychological service or supervision by telepractice, a licensee shall establish competence in use of telepractice that conforms to prevailing standards of scientific and professional knowledge.
- C.** A licensee who provides psychological service or supervision by telepractice shall maintain competence in use of telepractice through continuing education, consultation, or other procedures designed to address changing technology used in telepractice.
- D.** A licensee who provides psychological service or supervision by telepractice shall take all reasonable steps to ensure confidential communications stored electronically cannot be recovered or accessed by an unauthorized person when the licensee disposes of electronic equipment or data.

R4-26-110. Providing Psychological Service by Telepractice

- A.** Before providing psychological service by telepractice, a licensee who is in compliance with A.R.S. § 36-3602 and R4-26-109 shall conduct a risk analysis as clinically indicated and document in the client or patient's record required under R4-26-106 whether use of telepractice:
1. Is consistent with the client or patient's knowledge and skill regarding use of the technology involved in providing psychological service by telepractice or with ready access to assistance with use of the technology, and
 2. Is in the best interest of the client or patient.
- B.** A licensee shall not provide psychological service by telepractice unless both conditions of the risk analysis conducted under subsection (A) are met.
- C.** Before providing psychological service by telepractice, a licensee shall:
1. Obtain the written informed consent of the client or patient, using language that is clear and understandable and consistent with accepted professional and legal requirements. The licensee shall ensure the written informed consent addresses the following and a copy is placed in the client or patient's record required under R4-26-106:
 - a. The manner in which the licensee will verify the identity of the client or patient before each psychological service if the telepractice does not involve video;
 - b. The manner in which the licensee will ensure the client or patient's electronic communications are received only by the licensee or supervisee;
 - c. Limitations and innovative nature of using technology to provide psychological service;
 - d. Inherent confidentiality risk resulting from use of technology;
 - e. Potential risk of technology failure that disrupts provision of psychological service and how to re-establish communication if disruption occurs;
 - f. When and how the licensee will respond to routine electronic communications;
 - g. The circumstances under which the licensee and client or patient will use an alternative means of communication;
 - h. Who is authorized to access the electronic communication between the licensee and client or patient;
 - i. The manner in which the licensee stores the electronic communication between the licensee and the client or patient; and
 - j. The type of secure electronic technology the licensee will use to communicate with the client or patient;
 2. Establish a written agreement with the client or patient that specifies contact information for sources of face-to-face emergency services in the client or patient's geographical area and requires the client or patient to contact a source of face-to-face emergency services when the

client or patient experiences a suicidal or homicidal crisis or other emergency. If the licensee has knowledge the client or patient is experiencing a suicidal or homicidal crisis or other emergency, the licensee shall assist the client or patient to contact a source of face-to-face emergency services. The licensee shall place a copy of the written agreement required under this subsection in the client or patient's record required under R4-26-106.

3. Obtain the name and contact information for an emergency contact;
 4. Obtain information about an alternative means of contacting the client or patient; and
 5. Provide the client or patient with information about an alternative means of contacting the licensee.
- D.** A licensee who provides psychological service by telepractice shall repeat the risk analysis required under subsection (A) as clinically indicated.
- E.** If a licensee does not provide psychological service by telepractice to a client or patient, the provisions of this Section do not apply to electronic communications with the client or patient regarding:
1. Scheduling an appointment, billing, establishing benefits, or determining eligibility for services; and
 2. Checking the welfare of the client or patient in accord with reasonable professional judgment.

R4-26-111. Providing Supervision through Telepractice

- A.** As specified under A.R.S. § 32-2071(F) and (G), a licensee who provides ~~in-person~~ individual supervision shall ensure that:
- ~~1. No more than 50 percent of the supervision is provided through telepractice; and~~
 - ~~2. Supervision~~ supervision provided through telepractice is conducted using secure, confidential, real-time ~~visual~~ telecommunication technology. The licensee shall ensure at least 50 percent of individual supervision is either in person or using visual technology.
- B.** Before providing supervision by telepractice, a licensee who is in compliance with R4-26-109 shall conduct a risk analysis as clinically indicated and document whether providing supervision by telepractice:
1. Is appropriate for the issue presented by the supervisee's client or patient involved in the supervisory process,
 2. Is consistent with the supervisee's knowledge and skill regarding use of the technology involved in providing supervision by telepractice, and

3. Is in the best interest of both the supervisee and the supervisee's client or patient involved in the supervisory process.
- C.** A licensee shall not provide supervision by telepractice unless all conditions of the risk analysis conducted under subsection (B) are met.
- D.** Before providing supervision by telepractice, a licensee shall:
1. Enter a written agreement with the supervisee, using language that is clear and understandable and consistent with accepted professional and legal requirements. The licensee shall ensure the written agreement addresses the following and a copy is provided to the supervisee:
 - a. The manner in which the licensee will identify the supervisee before each supervisory session that does not involve video;
 - b. Limitations and innovative nature of using technology to provide supervision;
 - c. Potential risk of technology failure that disrupts provision of supervision and how to re-establish communication if disruption occurs;
 - d. When and how the licensee will respond to routine electronic communications from the supervisee;
 - e. The circumstances under which the licensee and supervisee will use an alternative means of communication; and
 - f. The type of secure electronic technology the licensee will use to communicate with the supervisee;
 2. Obtain information about an alternative means of contacting the supervisee; and
 3. Provide the supervisee with information about an alternative means of contacting the licensee.

ARTICLE 2. LICENSURE

R4-26-201. Application Deadline

- A.** The Board shall consider a license application at the Board's next scheduled meeting if an administratively complete application packet, ~~including reference forms mailed or e-mailed from the Board office,~~ is received by the Board office at least 18 days before the date of the meeting.
- B.** The Board shall consider a license application that is received fewer than 18 days before a scheduled meeting at a subsequent meeting.

R4-26-203. Application for Initial License

- A. An individual who wishes to be licensed as a psychologist shall submit an application packet to the Board that includes an application form approved by the Board, which is available from the Board office and on its website, with an attestation that is signed and dated by the applicant.
- B. Additionally, an applicant shall submit:
1. An original, un-retouched, ~~passport-quality~~ photograph of the applicant that is no larger than 1.5 X 2 inches and taken no more than 60 days before the date of application;
 2. The results of a self-query from the National Practitioner Data Bank;
 3. A copy of a valid fingerprint clearance card issued by the Department of Public Safety under A.R.S. Title 41, Chapter 12, Article 3.1 or evidence of application for a valid fingerprint clearance card;
 - ~~3.4.~~ As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law;
 - ~~4.5.~~ The Board's Mandatory Confidential Information form;
 - ~~5.6.~~ Name, position, and address of at least two individuals to serve as references who:
 - a. Are psychologists licensed or certified to practice psychology in a United States or Canadian regulatory jurisdiction and who are not members of the Arizona Board of Psychologist Examiners;
 - b. Are familiar with the applicant's work experience in the field of psychology or in a postdoctoral program within the three years immediately before the date of application. If more than three years have elapsed since the applicant last engaged in professional activities in the field of psychology or in a postdoctoral program, the references may pertain to the most recent three-year period in which the applicant engaged in professional activities in the field of psychology or in a postdoctoral program; and
 - c. Recommend the applicant for licensure;
 - ~~6.7.~~ The fee required under R4-26-108; and
 - ~~7.8.~~ Any other information authorized by statute.
- C. In addition to the requirements in subsections (A) and (B), an applicant shall arrange to have the following directly submitted to the Board:
1. An official transcript from each university or college from which the applicant attended a graduate program or received a graduate degree that contains the date the degree was conferred;
 2. An official document from the degree-granting institution indicating that the applicant completed a residency that satisfies the requirements of A.R.S. § 32-2071 (K);
 3. For an applicant applying supervised preinternship hours toward licensure, an attestation submitted by the doctoral program training director, faculty supervisor, or other official of the

doctoral-granting institution who is knowledgeable of the applicant's preinternship experience verifying that the applicant's preinternship experience meets the requirements of A.R.S. § 32-2071(D).

4. An attestation from the applicant's supervisor, if available, or a psychologist knowledgeable of the applicant's internship training program, verifying that the applicant's internship training program meets the requirements in A.R.S. § 32-2071 (F). If the supervisor or knowledgeable psychologist is not available, the Board shall accept primary source verification received from the Association of State and Provincial Psychology Boards. In this subsection, "not available" means the supervisor or knowledgeable psychologist is deceased or all reasonable efforts to locate the supervisor or knowledgeable psychologist were unsuccessful;
5. For an applicant applying supervised postdoctoral experience toward licensure, an attestation from the applicant's postdoctoral supervisor, if available, or a psychologist knowledgeable of the applicant's postdoctoral experience verifying that the applicant's postdoctoral experience meets the requirements in A.R.S. § 32-2071 (G). If the supervisor or knowledgeable psychologist is not available, the Board shall accept primary source verification received from the Association of State and Provincial Psychology Boards. In this subsection, "not available" means the supervisor or knowledgeable psychologist is deceased or all reasonable efforts to locate the supervisor or knowledgeable psychologist were unsuccessful;
6. Verification of all other psychology licenses or certificates ever held in any regulatory jurisdiction; and
7. An official notification of the applicant's score on the national examination. An applicant who passed the national examination in accordance with the standard established at A.R.S. § 32-2072(A), shall have the examination score sent directly to the Board by the Association of State and Provincial Psychology Boards or by the regulatory jurisdiction in which the applicant originally passed the examination.

R4-26-203.01. Application for Licensure by Credential

- A. An applicant for a psychologist license by credential under A.R.S. § 32-2071.01(D) shall submit an application packet to the Board that includes:
 1. An application form approved by the Board, which is available from the Board office and on its website, with an attestation that is signed and dated by the applicant;

2. A copy of a valid fingerprint clearance card issued by the Department of Public Safety under A.R.S. Title 41, Chapter 12, Article 3.1 or evidence of application for a valid fingerprint clearance card;
3. As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law;

~~2-4.~~ Verification sent directly to the Board by the credentialing agency that the applicant:

- a. Holds a current Certificate of Professional Qualification in Psychology (CPQ) issued by the Association of State and Provincial Psychology Boards;
- b. Holds a current National Register of Health Service Providers in Psychology (NRHSPP) credential and has practiced psychology independently at the doctoral level for at least five years; or
- c. Is a diplomate or specialist of the American Board of Professional Psychology (ABPP); and

~~3-5.~~ Verification of all other psychology licenses or certificates ever held in any jurisdiction.

- B. An applicant for a psychologist license by credential based on a National Register of Health Service Providers in Psychology credential shall have notification that the applicant obtained a passing score on the national examination sent directly to the Board by the Association of State and Provincial Psychology Boards or by the regulatory jurisdiction in which the applicant originally passed the examination.
- C. If the Board determines an application for licensure by credential requires clarification, the Board may require an applicant submit or cause the applicant's credentialing agency to submit directly to the Board any documentation including transcripts, course descriptions, catalogues, brochures, supervised experience verifications, examination scores, application for credential, or any other information deemed necessary by the Board.

R4-26-203.02. Application to Take National Examination before Completing Supervised Professional Experience Required for Licensure

- A. As provided under A.R.S. § 32-2072(C), an individual who has completed the education requirements specified in A.R.S. § 32-2071(A) but has not completed the supervised professional experience requirements specified in A.R.S. § 32-2071(D) may apply to the Board for approval to take the national examination.
- B. To apply ~~for approval~~ under subsection (A) for approval to take the national examination, an individual shall submit to the Board the application form and applicable documents required under R4-26-203(A) through (C) except the document required under R4-26-203(B)(3).

- C. ~~When the Board approves an individual who makes application under subsections (A) and (B), the~~
The Board shall administratively close the applicant's an approved application packet to take the
national examination when the Board receives the applicant's examination score. If necessary, an
individual granted approval to take the national examination may request an extension under
R4-26-204.
- D. An individual ~~who is granted approval~~ whose application to take the national examination is approved
~~under subsection (C) to take the national examination~~ may apply for an initial license under
R4-26-203 after completing the supervised professional experience requirements specified in A.R.S. §
32-2071(D) as follows:
1. Within 36 months after the application to take the national examination submitted under
subsection (B) was administratively closed under subsection (C), request that the Board re-open
the application ~~packet~~ submitted under subsection (B); and
 2. Submit the portions of the application packet required under R4-26-203 that were not submitted
under subsection (B).

R4-26-203.03. Reapplication for License; Applying Anew

- A. The following may reapply for a license:
1. An individual who failed the national examination required under A.R.S. § 32-2072 and
R4-26-204 no more than three times, and
 2. An individual whose application submitted under R4-26-203 or R4-26-203.01 was
administratively closed by the Board under R4-26-208(H) less than one year before reapplication.
- B. An individual identified in subsection (A) may ask the Board to base a licensing decision, in part, on
applicable forms and documents previously submitted.
- C. An individual eligible under subsection (B) to reapply for licensure shall:
1. Submit a reapplication form, which is available from the Board office and on its website, to the
Board;
 2. If previously submitted references were submitted more than 12 months before the date of
reapplication, provide the names, positions, and addresses of at least two individuals to serve as
references who:
 - a. Are psychologists licensed or certified to practice psychology in a United States or Canadian
regulatory jurisdiction and are not members of the Arizona Board of Psychologist Examiners;
 - b. Are familiar with the applicant's work experience in the field of psychology or in a
postdoctoral program within the three years immediately before the date of reapplication. If

more than three years have elapsed since the applicant last engaged in professional activities in the field of psychology or in a postdoctoral program, the references may pertain to the most recent three-year period in which the applicant engaged in professional activities in the field of psychology or in a postdoctoral program; and

- c. Recommend the applicant for licensure;
 3. List all professional employment since the date of the most recent application or reapplication including:
 - a. Beginning and ending dates of employment,
 - b. Number of hours worked per week,
 - c. Name and address of employer,
 - d. Position title,
 - e. Nature of work, and
 - f. Nature of supervision;
 4. Submit the results of a self-query from the National Practitioner Data Bank-~~Healthcare Integrity and Protection Data Bank~~;
 5. Submit a copy of a valid fingerprint clearance card issued by the Department of Public Safety under A.R.S. Title 41, Chapter 12, Article 3.11 or evidence of application for a valid fingerprint clearance card; and
 - ~~5-6.~~ Pay the fee required under R4-26-108(A)(2).
- D.** The following shall apply anew for a license rather than reapplying:
1. An individual whose application submitted under R4-26-203 or R4-26-203.01 was denied by the Board,
 2. An individual who was permitted by the Board to withdraw an application submitted under R4-26-203 or R4-26-203.01 before the Board acted on the application,
 3. An individual whose application submitted under R4-26-203 or R4-26-203.01 was administratively closed by the Board under R4-26-208(H) more than one year before another application is submitted,
 4. An individual whose license was revoked under A.R.S. § 32-2081(N)(1),
 5. An individual whose license expired under A.R.S. § 32-2074,
 6. An individual whose license was canceled under A.R.S. 32-2074, and
 7. An individual who retired under A.R.S. § 32-2073(G).

R4-26-203.04. Temporary License under A.R.S. § 32-2073(B)

- A.** To be eligible to be issued a temporary license under A.R.S. § 32-2073(B), an individual shall:
1. Have completed the educational requirements specified in A.R.S. § 32-2071(A) through (C);
 2. Have completed 1,500 hours of supervised professional experience as described in A.R.S. § 32-2071(F); and
 3. Be participating in a supervised postdoctoral professional experience as described in A.R.S. § 32-2071(G).
- B.** An applicant seeking a temporary license under A.R.S. § 32-2073(B), shall submit an application packet to the Board that includes:
1. The application form required under R4-26-203 and ~~provide~~ all required information required under R4-26-203(B) and (C) except that specified in R4-26-203(C)(3), (5), and (7); ~~and~~
 2. The written training plan required under A.R.S. § 32-2071(G)(7) from the entity at which the supervised postdoctoral professional experience is occurring that includes at least the following:
 - a. Goal and content of each training experience,
 - b. Expectations regarding the nature, quality, and quantity of work to be done by the supervisee during the supervised postdoctoral professional experience,
 - c. Methods of evaluating the supervisee and the supervised postdoctoral professional experience,
 - d. Total number of hours to be accrued during the supervised postdoctoral professional experience,
 - e. Total number of face-to-face contact hours the supervisee is to have with clients or patients during the supervised postdoctoral professional experience,
 - f. Total number of hours of supervision the supervisee is to receive during the supervised postdoctoral professional experience,
 - g. Qualifications of all individuals who provide supervision during the supervised postdoctoral professional experience including documentation that each is qualified under the standards at A.R.S. § 32-2071(G), ~~and~~
 - h. Acknowledgment that ethics training is included in the training experience; and
 3. A written request for approval to take the national examination specified under A.R.S. § 32-2072, if applicable, using a form approved by the Board and available in the Board office and on its website.
- C.** An individual issued a temporary license under A.R.S. § 32-2073(B) shall practice psychology only under supervision. It is unprofessional conduct for the holder of a temporary license issued under A.R.S. § 32-2073(B) to practice psychology without supervision.

- D. A temporary license issued under A.R.S. § 32-2073(B) is valid for 36 months and is not renewable. If the Board denies an active license under R4-26-203 to the holder of a temporary license issued under A.R.S. § 32-2073(B), the temporary license terminates at the time of license denial.
- E. The holder of a temporary license issued under A.R.S. § 32-2073(B) shall:
 - 1. Comply fully with all provisions of A.R.S. Title 32, Chapter 19.1, and this Chapter;
 - 2. Not practice psychology outside the postdoctoral experience specified in the written training plan required under subsection (B)(2); and
 - 3. Submit to the Board a proposed new training plan if ~~any modification~~ to the written training plan required under subsection (B)(2) is modified. The proposed new training plan shall be submitted within 10 days after the effective date of the modification.
- F. The holder of a temporary license who was not previously approved to take the national examination may submit to the Board a written request for approval to take the national examination using a form approved by the Board and available in the Board office.

R4-26-204. Examinations

A. General rules.

- 1. Under A.R.S. § 32-2072(C), an applicant who fails the national examination three times in any regulatory jurisdiction shall, before taking the national examination again, review the applicant's areas of deficiency and implement a program of study or practical experience designed to remedy the deficiencies. This remedial program may consist of any combination of course work, self-study, internship experience, and supervision.
- 2. An applicant required under subsection (A)(1) to implement a program of study or practical experience may apply anew for licensure. The applicant shall submit a new application packet, as described in R4-26-203, and include information about any actions proposed under subsection (A)(1).
- 3. The holder of a temporary license issued under A.R.S. § 32-2073(B) who:
 - a. Fails the national examination three times and complies with subsection (A)(1) may submit to the Board a written request to retake the national examination using a form that is approved by the Board and available at the Board office and on its website; or
 - b. Fails to take the national examination within one year after the Board's authorization to do so shall submit a written request for approval to take the national examination using a form that is approved by the Board and available at the Board office and on its website.

~~3-4.~~ Examination deadline. ~~Unless the Board grants an extension, the~~ The Board shall administratively close the file of an applicant authorized by the Board to take an examination specified in subsection (B) or (C) who fails to take the examination within one year from the date of the Board's authorization.

5. Extension of examination deadline. An applicant or the holder of a temporary license issued under A.R.S. § 32-2073(B) may obtain an extension of the examination deadline specified in subsection (A)(3)(b) or (A)(4). Upon ~~Upon~~ To obtain an extension of the examination deadline, the applicant or temporary licensee shall submit a written request to the Board's Executive Director received by the Board on or before the applicant's examination deadline; ~~The~~ The Board shall grant the applicant or temporary licensee one extension of up to six months to take the examination. The applicant or temporary licensee may request additional extensions for good cause, which includes but is not limited to illness or injury of the licensee or a close family member, death of a close family member, birth or adoption of a child, military service, relocation, natural disaster, financial hardship, or residence in a foreign country for at least 12 months of the license period. The Board shall ensure that an extension is for no more than six months. ~~This Section does not apply to an applicant approved to take the national examination under R4-26-203.02.~~

~~4-6.~~ The Board shall deny or revoke a license, as applicable, if an applicant or temporary licensee commits any of the following acts with respect to ~~the~~ a licensing examination specified under subsection (B) or (C):

- a. Violates the confidentiality of examination materials;
- b. Removes any examination materials from the examination room;
- c. Reproduces any portion of a licensing examination;
- d. Aids in the reproduction or reconstruction of any portion of a licensing examination;
- e. Pays or uses another person to take a licensing examination ~~for the applicant~~ or to reconstruct any portion of the licensing examination;
- f. Obtains examination material, either before, during, or after an examination, for the purpose of instructing or preparing applicants for examinations;
- g. Sells, distributes, buys, receives, or has possession of any portion of a future, current, or previously administered licensing examination that is not authorized by the Board or its authorized agent for release to the public;
- h. Communicates with any other ~~examiner~~ examinee during the administration of a licensing examination;

- i. Copies answers from another examinee or permits the copying of answers by another examinee;
 - j. Possesses during the administration of a licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than material distributed during the examination; or
 - k. Impersonates another examinee.
- B.** National examination. Under A.R.S. § 32-2072, the Board shall require that an applicant or temporary licensee take and pass the national examination. An applicant or temporary licensee authorized by the Board to take the national examination passes the examination ~~if the applicant's~~ by obtaining a score that equals or exceeds the passing score specified in A.R.S. § 32-2072(A). After the Board receives the examination results, the Board shall notify the applicant or temporary licensee in writing of the results.
- C.** Additional examination.
- 1. The Board shall require an applicant or temporary licensee to pass the national examination specified in subsection (B) before allowing the applicant or temporary licensee to take an additional examination.
 - 2. Under A.R.S. § 32-2072(B), the Board may administer an additional examination to an applicant or temporary licensee to determine the adequacy of the applicant's or temporary licensee's knowledge and application of Arizona law. The additional examination may also cover the practice of psychology, ethical conduct, and psychological assessment and treatment practices.
 - a. The Board shall review and approve the additional examination before administration;
 - b. The additional examination may be developed and administered by the Board, a committee of the Board, consultants to the Board, or independent contractors; ~~and~~
 - c. ~~Applicants, examiners,~~ Examiners and consultants to the Board shall execute a security acknowledgment form and agree to maintain examination security.

R4-26-205. Renewal of License

- A.** ~~Beginning May 1, 2017,~~ a A license issued by the Board, whether active or inactive, expires on the last day of a licensee's birth month during the licensee's renewal year.
- B.** The Board considers a license renewal application packet timely if ~~submitted if delivered or mailed to the Board's office and date stamped or postmarked~~ to the online renewal system on or before the last day of a licensee's birth month during the licensee's renewal year.

- C. To renew a license, a licensee shall submit to the Board a renewal application form approved by the Board, ~~which is and~~ available ~~from the Board office and~~ on its website, with an attestation that is signed and dated by the licensee.
- D. Additionally, to renew a license, a licensee shall submit to the Board:
1. The license renewal fee required under R4-26-108;
 2. A copy of a valid fingerprint clearance card issued by the Department of Public Safety under A.R.S. Title 41, Chapter 12, Article 3.1;
 - ~~2.3.~~ If the documentation previously submitted under R4-26-203(B)(3) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired;
 - ~~3.4.~~ The following information about the continuing education completed during the previous license period:
 - a. Title of the continuing education;
 - b. Date completed;
 - c. Sponsoring organization, publication, or educational institution;
 - d. Number of hours in the continuing education; and
 - e. Brief description of the continuing education; and
 - ~~4.5.~~ Any other information authorized by statute.
- E. If a completed application is timely submitted under subsections (C) and (D), the licensee may continue to practice psychology under the active license until notified by the Board that the application for renewal has been approved or denied. If the Board denies license renewal, the licensee may continue to practice psychology until the last day for seeking review of the Board's decision or a later date fixed by a reviewing court.
- F. Under A.R.S. § 32-2074 (C), the license of a licensee who fails to submit a renewal application, including the information about continuing education completed, on or before the last day of the licensee's birth month during the licensee's renewal year expires and the licensee shall immediately stop practicing psychology.
- G. A psychologist whose license expires under subsection (F) may have the license reinstated by submitting the following to the Board within two months after the last day of the licensee's birth month during the licensee's renewal year:
1. The license renewal application required under subsection (C) and the documents required under subsections (D)(2) ~~and (3)~~ through (4); and
 2. The license renewal and reinstatement fees required under R4-26-108.

- H. A psychologist whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) may have the license reinstated by:
 1. Complying with subsection (G) within one year after the last day of the licensee's birth month during the licensee's renewal year, and
 2. Paying the fee for reinstatement of an active or inactive license as specified in R4-26-108.
- I. A psychologist whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) or (H) may be licensed again only by complying with R4-26-203.
- J. If the Board audits the continuing education records of a licensee and determines that some of the hours do not conform to the standards listed in R4-26-207, the Board shall disallow the non-conforming hours. If the remaining hours are less than the number required, the Board shall deem the licensee as failing to satisfy the continuing education requirements and provide notice of the disallowance to the licensee. The licensee has 90 days from the mailing date of the Board's notification of disallowance to complete the continuing education requirements for the past reporting period and shall provide the Board with an affidavit documenting completion. If the Board does not receive an affidavit within 90 days of the mailing date of notification of disallowance or the Board deems the affidavit insufficient, the Board may take disciplinary action under A.R.S. § 32-2081.

R4-26-206. Reinstatement of License from Inactive to Active Status; Cancellation of License

- A. Except as provided in subsection (C), when considering reinstatement of a psychologist from inactive to active status, the Board shall presume that the psychologist has maintained and updated the psychologist's professional knowledge and capability to practice as a psychologist if the psychologist presents to the Board documentation of completion of a prorated amount of continuing education, calculated under subsection (B).
- B. A psychologist who is on inactive status for at least two years may reinstate the license to active status by presenting to the Board:
 1. A copy of a valid fingerprint clearance card issued by the Department of Public Safety under A.R.S. Title 41, Chapter 12, Article 3.1;
 2. If the documentation previously submitted under R4-26-203(B)(3) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired; and
 3. ~~documentation~~ Documentation of completion of at least 40 hours of continuing education that meets the standards in R4-26-207. A psychologist who is on inactive status for less than two years may reinstate the license to active status by presenting to the Board documentation of completion

of a prorated amount of continuing education. To calculate the prorated amount of continuing education hours required, the Board shall multiply 1.67 by the number of months from the date of inactive status until the date the application for reinstatement is received by the Board. For every six months of inactive status, the Board shall require one hour of continuing education in: in each of the topics specified in R4-26-207(B).

- ~~1. Ethics, as specified under R4-26-207(B)(1); and~~
- ~~2. Domestic violence, intimate partner abuse, child abuse, or abuse of vulnerable adults, as specified under R4-26-207(B)(2).~~

C. A psychologist may request that the Board cancel the psychologist's license if the psychologist is not under investigation by any regulatory jurisdiction. Fees paid to obtain a license are not refundable when the license is canceled. If an individual whose request for license cancellation is approved by the Board subsequently decides to practice psychology, the individual shall submit a new application under R4-26-203 and meet the requirements in A.R.S. § 32-2071.

R4-26-207. Continuing Education

A. A licensee shall complete at least 40 hours of continuing education during each license period. Unless specified otherwise, one clock hour of instruction, training, or making a presentation equals one hour of continuing education.

B. A licensee shall ensure the continuing education hours obtained include:

1. ~~at~~ At least four hours in professional ethics;
2. Completion of the Board's four-hour online jurisprudence education tool; and
3. At least four hours regarding diversity including race, ethnicity, age, sex, gender, gender identification, neuro-differences, developmental abilities, physical abilities, language, culture, and income inequality.

C. During the license period in which an individual is initially licensed, the Board shall pro-rate the number of continuing education hours, including a pro-rated number of hours addressing ethics, that the new licensee must complete during the initial license period. To calculate the number of continuing education hours that a new licensee must obtain, the Board shall divide the 40 hours of continuing education required in a license period by 24 and multiply the quotient by the number of whole months from the date of initial licensure until the end of the license period. During the first license period, for every six months from the month of license issuance to the end of the license period, the Board shall require one hour of continuing education in ethics.

- D.** If the standards in subsection (F) are met, the Board shall accept the following for continuing education hours.
1. Post-doctoral study sponsored by a university or college that is regionally accredited under A.R.S. § 32-2071(A)(1) and provides a graduate-level degree program;
 2. A course, seminar, workshop, or home study for which a certificate of attendance or completion is provided;
 3. A continuing education program offered by a national, international, regional, or state association, society, board, or continuing education provider;
 4. Teaching a graduate-level course in applied psychology at a university or college that is regionally accredited under A.R.S. § 32-2071(A)(1). A licensee who teaches a graduate-level course in applied psychology receives the same number of continuing education hours as number of classroom hours for those who take the graduate-level course;
 5. Organizing and presenting a continuing education activity. A licensee who organizes and presents a continuing education activity receives the same number of continuing education hours as those who attend the continuing education activity;
 6. Serving as a complaint consultant. During a license period, a licensee who serves as a Board complaint consultant to review Board complaints and provides written reports to the Board or provides expert testimony on behalf of the Board may receive continuing education hours equal to the actual number of hours served as a complaint consultant to a maximum of 20 hours. A licensee who is paid by the Board for services rendered shall not receive continuing education credit for the time or services for which payment was made;
 7. The Board shall allow a maximum of 10 continuing education hours for each of the following during a license period:
 - a. Attending a Board meeting or serving as a member of the Board. A licensee receives up to six continuing education hours in professional ethics for attending both morning and afternoon sessions of a Board meeting and three continuing education hours for attending either the morning or afternoon session or at least four hours of a Board meeting. A licensee shall complete documentation provided by the Board at the time the licensee attends a Board meeting;
 - b. Having an authored or co-authored psychology book, psychology book chapter, or article in a peer-reviewed psychology journal published. A licensee who has an authored or co-authored psychology book, psychology book chapter, or article in a peer-reviewed psychology journal published receives 10 continuing education hours in the year of publication;

- c. Participating in a study group for professional growth and development as a psychologist. A licensee receives one hour of continuing education for each hour of participation to a maximum of 10 continuing education hours for participating in a study group. The Board shall allow continuing education hours for participating in a study group only if the licensee maintains the documentation required under subsection (G)(5);
 - d. Presenting a symposium or paper at a state, regional, national, or international psychology meeting. A licensee who presents a symposium or paper receives the same number of continuing education hours as hours of the session, as published in the agenda of the meeting, at which the symposium or paper is presented to a maximum of 10 continuing education hours;
 - e. Presenting a poster during a poster session at a state, regional, national, or international psychology meeting. A licensee who presents a poster receives an hour of continuing education for each hour the licensee is physically present with the poster during the poster session, as published in the agenda of the meeting, to a maximum of 10 continuing education hours; and
 - f. Serving as an elected officer of an international, national, regional, or state psychological association or society. A licensee who serves as an elected officer may receive continuing education hours equal to the actual number of hours served to a maximum of 10 continuing education hours.
- E.** The Board shall not allow continuing education credit more than once in a license period for:
- 1. Teaching the same graduate-level course,
 - 2. Organizing and presenting a continuing education activity on the same topic or content area, or
 - 3. Presenting the same symposium or paper at a state, regional, national, or international psychology meeting.
- F.** Standards for continuing education. To be acceptable for continuing education credit, an activity identified in subsections (D)(1) through (4) shall:
- 1. Focus on the practice of psychology, as defined at A.R.S. § 32-2061, for at least 75 percent of the program hours; and
 - 2. Be taught by an instructor who is readily identifiable as competent in the subject of the continuing education by having an advanced degree, teaching experience, work history, published professional articles, or previously presented continuing education on the same subject.
- G.** The Board shall accept the following documents as evidence of completion of continuing education hours:
- 1. A certificate of attendance or completion;

2. Statement signed by the provider verifying participation in the activity;
 3. Copy of transcript of course completed under subsection (D)(1);
 4. Documents indicating a licensee's participation as an elected officer or appointed member as specified in subsection (D)(7)(f); or
 5. An attestation signed by all participants of a study group under subsection (D)(7)(c) that includes a description of the activity, subject covered, dates, and number of hours.
- H.** A licensee shall maintain the documents listed in subsection (G) through the license period following the license period in which the documents were obtained.
- I.** The Board may audit a licensee's compliance with continuing education requirements. The Board may deny renewal or take other disciplinary action against a licensee who fails to obtain or document required continuing education hours. The Board may discipline a licensee who commits fraud, deceit, or misrepresentation regarding continuing education hours.
- J.** A licensee who cannot meet the continuing education requirement for good cause may seek an extension of time to complete the continuing education requirement by submitting a written request to the Board with the timely submission of the renewal application required under R4-26-205.
1. Good cause includes but is not limited to illness or injury of the licensee or a close family member, death of a close family member, birth or adoption of a child, military service, relocation, natural disaster, financial hardship, or residence in a foreign country for at least 12 months of the license period.
 2. The Board shall not grant an extension longer than one year.
 3. A licensee who cannot complete the continuing education requirement within the extension may apply to the Board for inactive license status under A.R.S. § 32-2073 (G).
- K.** No continuing education hours may be carried over to the next licensing period.
- L.** The Board shall not accept for continuing education hours a course, workshop, seminar, or symposium designed to increase income or office efficiency.

R4-26-210. Supervised Professional Experience

- A.** The Board shall use the following criteria to determine whether an applicant's supervised preinternship professional experience complies with A.R.S. § 32-2071 (E):
1. The supervised preinternship professional experience was part of the applicant's doctoral program from an institution of higher education that meets the standards in A.R.S. § 32-2071(A);
 2. The applicant completed appropriate academic preparation before beginning the supervised preinternship professional experience. The Board shall not include any assessment or treatment

conducted as part of the required academic preparation in the hours of supervised preinternship professional experience; and

3. For each supervised preinternship professional experience training site, the applicant has a written training plan with both the training site and the institution of higher education at which the applicant is pursuing a doctoral degree that includes at least the following:
 - a. Training activities included and the amount of time allotted to each activity,
 - b. Goals and objectives of each training activity,
 - c. Methods of evaluating the supervisee and the supervised preinternship professional experiences provided,
 - d. Approval of all individuals providing supervision at sites external to the training site,
 - e. Total number of hours to be accrued during the supervised preinternship professional experience,
 - f. Total number of hours of face-to-face contact hours with clients or patients during the supervised preinternship professional experience,
 - g. Total number of hours of supervision during the supervised preinternship professional experience,
 - h. Qualifications of all individuals who provide supervision during the supervised preinternship professional experience, and
 - i. Acknowledgment that ethics training will be included in all activities.
- B.** The Board shall use the following criteria to determine whether an applicant's internship or training program qualifies as supervised professional experience under A.R.S. § 32-2071 (F):
1. The written statement required under A.R.S. § 32-2071 (F)(9):
 - a. Was established no later than the time the applicant entered the internship or training program; and
 - b. Corresponds to the internship or training program the applicant completed;
 2. A supervisor was directly available to the applicant when decisions were made regarding emergency psychological services provided to a client or patient as required under A.R.S. § 32-2071 (F)(2);
 3. Course work used to satisfy the requirements of A.R.S. § 32-2071(A) or dissertation time is not credited toward the face-to-face, individual supervision time required by A.R.S. § 32-2071 (F)(6);
 4. The two hours a week of other learning activities required under A.R.S. § 32-2071 (F)(6) include one or more of the following
 - a. Case conferences involving a case in which the applicant was actively involved,
 - b. Seminars involving clinical issues,

- c. Co-therapy with a professional staff person including discussion,
 - d. Group supervision, or
 - e. Additional individual supervision;
5. The training program had the applicant work with other doctoral level psychology trainees and included in the written statement required under A.R.S. § 32-2071 (F)(9) a description of the program policy specifying the opportunities and resources provided to the applicant for working or interacting with other doctoral level psychology trainees in the same or other sites; and
 6. Time spent fulfilling academic degree requirements, such as course work applied to the doctoral degree, practicum, field laboratory, dissertation, or thesis credit, is not credited toward the 1,500 hours of supervised professional experience hours required by A.R.S. § 32-2071 (F). This subsection does not restrict a student from participating in activities designed to fulfill other doctoral degree requirements. However, the Board shall not credit time spent participating in activities to fulfill academic degree requirements toward the hours required under A.R.S. § 32-2071 (F).
- C. Under A.R.S. § 32-2071(G)(5), at least 40 percent of an applicant’s supervised postdoctoral experience shall involve direct client or patient contact. If an applicant’s supervised postdoctoral hours applied toward licensure include less than 40 percent direct contact hours, the applicant shall work additional time to achieve the required percentage of direct contact hours. While additional direct contact hours may be obtained to meet this requirement, the Board shall count no more than 1,500 hours of total postdoctoral experience for the purpose of licensure.
- D. An applicant shall ensure the written training plan required under A.R.S. § 32-2071(G)(7) is from the organization at which the supervised postdoctoral professional experience is occurring and includes the following:**
1. Goal and content of each training experience;
 2. Expectations regarding the nature, quality, and quantity of work to be done by the supervisee during the supervised postdoctoral professional experience;
 3. Methods of evaluation the supervisee and the supervised postdoctoral professional experience;
 4. Total number of hours to be accrued during the supervised postdoctoral professional experience;
 5. Total number of face-to-face contact hours the supervisee is to have with clients or patients during the supervised postdoctoral professional experience;
 6. Total number of hours of supervision the supervisee is to receive during the supervised postdoctoral professional experience;

7. Qualifications of all individuals who provide supervision during the supervised postdoctoral professional experience including documentation that each is qualified under the standards at A.R.S. § 32-2071(G); and
8. Acknowledgement that ethics training is included in the supervised postdoctoral professional experience.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

1. Identification of the rulemaking:

The Board is making minor changes needed to ensure the Board's rules are consistent with statute and industry and Board practice. The changes include:

- Deleting the fee for issuance of a license;
- Reducing the circumstances under which the Board charges for services it provides;
- Clarifying statutory cross references;
- Clarifying that supervision through telepractice includes use of visual technology;
- Removing references from the standard for a complete application packet;
- Adding the statutory requirement that an applicant provide a valid fingerprint clearance card;
- Clarifying provisions regarding application to take the national examination before completing supervised professional experience;
- Clarifying that a temporary license holder is required to take the national examination;
- Clarifying that provisions regarding the national examination apply to temporary license holders;
- Amending continuing education topics required of all licensees; and
- Placing standards for written training plan required for supervised postdoctoral professional experience in rule rather than substantive policy statement.

An exemption to Executive Order 2022-01 was provided by Tony Hunter, of the Governor's Office, in an e-mail dated March 4, 2022.

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

Until the rulemaking is complete, the Board's rules will continue to be inconsistent with statute and industry and Board practice.

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:

It is not good government practice to have rules that are inconsistent with statute and industry and Board practice.

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)).

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

When the rulemaking is completed, the Board's rules will be consistent with statute and industry and Board practice.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

The minor changes in this rulemaking will have minimal economic impact. The requirement, and associated cost, to obtain a fingerprint clearance card results from statute (See A.R.S. § 32-2063(A)(14)) rather than rule.

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: Heidi Herbst Paakkonen

Address: Board of Psychologist Examiners
1740 W Adams Street, Suite 3403
Phoenix, AZ 85007

Telephone: (602) 542-3018

Fax: (602) 542-8279

E-mail: Heidi.paakkonen@psychboard.az.gov

Web site: www.psychboard.az.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

Licensees, applicants, and the Board are persons directly affected by, bearing the costs of, and benefitting from this rulemaking. The Board currently licenses 2,330 psychologists. There were 169 applicants for licensure last year. As previously indicated the requirement and associated cost for a fingerprint clearance card result from statute rather than rule.

Telepractice has emerged as an important and effective strategy to deliver psychological services. The state of emergency created by the pandemic pushed the profession to increasingly use telepractice. Although the Board does not have numbers, it is safe to assume that telepractice is an important component of providing supervision.

The Board recently implemented processing efficiencies that allow it to eliminate the license issuance fee and the charge for certain services. This reduces regulatory burdens for licensees and applicants but has a negative impact on state revenue. Changes made regarding a

temporary licensee were overlooked previously but are not new. The information regarding a training plan for supervised professional experience is currently in a substantive policy statement but the Board determined it more appropriately belongs in rule. The rule does not impose new requirements. Removing the specification of reference forms as part of a complete application packet also does not change requirements but rather, treats the reference forms as all other forms that are part of a complete application packet.

Requiring continuing education in jurisprudence and diversity is designed to address important issues in the profession. This requirement does not increase the number of hours of required continuing education but rather simply specifies the subject matter of some of the hours.

The Board incurred the cost of completing this rulemaking and will incur the cost of implementing and enforcing it. These costs are minimal.

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:

The Board is the only state agency directly affected by the rulemaking. It will not require another full-time employee to implement and enforce the rule changes.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

No political subdivision is directly affected by the rulemaking.

- c. Costs and benefits to businesses directly affected by the rulemaking:

Psychologists are businesses directly affected by the rulemaking. Their costs and benefits are described in item 4.

6. Impact on private and public employment:

The Board expects the rulemaking to have no impact on private or public employment.

7. Impact on small businesses²:

- a. Identification of the small business subject to the rulemaking:

Psychologists are small businesses subject to the rulemaking.

- b. Administrative and other costs required for compliance with the rulemaking:

Compliance with the rulemaking requires:

- Applying for a license, taking an examination, and paying a fee;

² Small business has the meaning specified in A.R.S. § 41-1001(21).

- Complying with the requirements regarding telepractice, including those regarding use of telepractice in supervision;
- Obtaining a fingerprint clearance card;
- Taking continuing education in specified subjects; and
- Having a written training plan for supervised professional experience.

c. Description of methods that may be used to reduce the impact on small businesses:

Because all psychologists are small businesses, it is not possible to reduce the minimal impact of the rules on small business.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

No private persons or consumers are directly affected by the rulemaking.

9. Probable effects on state revenues:

The Board has only one month of experience not collecting a fee for license issuance. During that month, the Board did not collect \$1,320 it would have collected previously for issuing licenses to psychologists. This means, as provided under A.R.S. § 32-2065(B), the Board did not deposit \$132 in the state general fund. Assuming this month was typical, this means the effect of the rulemaking on state revenue will be a reduction of approximately \$1,584 annually.

10. Less intrusive or less costly alternative methods considered:

The provisions of the rulemaking are neither intrusive nor costly. No alternative methods were considered.

5/9/22, 8:11 AM

State of Arizona Mail - Comment on proposed change to R4-26-207 (B)



Heidi Paakkonen <heidi.paakkonen@psychboard.az.gov>

Comment on proposed change to R4-26-207 (B)

1 message

Menchola, Marisa - (menchola) <menchola@arizona.edu>

Fri, May 6, 2022 at 4:01 PM

To: "heidi.paakkonen@psychboard.az.gov" <heidi.paakkonen@psychboard.az.gov>

Good afternoon, Heidi,

I am so delighted and grateful to see the addition of a diversity component to the CE requirement for license. However, I noted that the proposed language does not include ethnicity, language, or culture:

At least four hours regarding diversity including race, age, sex, gender, gender identification, neuro-differences, developmental abilities, physical abilities, and income inequality.

I would like to respectfully ask the Board to consider adding the terms *ethnicity*, *language*, and *culture* to this list. As a few examples of why this matters: Hispanic/Latinx is considered an ethnicity, not a race, since Hispanic individuals can be White, Black, Indigenous, or multiracial. So as written, the language seems to exclude, for example, a training on working with Hispanic clients (an ethnicity), or a training on the psychological assessment of individuals for whom English is their second language, or a training on working with clients from a Muslim culture, for example.

Sincerely,

Marisa Menchola, Ph.D., ABPP-CN

Board Certified in Clinical Neuropsychology

Associate Clinical Professor,

Banner University Medicine – Neurology



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DOUGLAS A. DUCEY
Governor

HEIDI HERBST PAAKKONEN
Executive Director

September 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: Board of Psychologist Examiners; Title 4, Chapter 26

Dear Ms. Sornsin:

On behalf of the Arizona Board of Psychologist Examiners ("Board") I submit the following additional information for consideration by the Governor's Regulatory Review Council specific to the rulemakings referenced above.

Council staff has posed the question whether the Board has done any additional analysis regarding the benefits of continuing education specific to diversity topics, specifically as they relate to public health and safety, as weighed against the costs required of licensees to take courses on these topics, a search finds at least 98 on-demand courses on this topic are currently offered by the American Psychological Association. These courses are priced the same as continuing education courses that are specific to other topics (e.g. anxiety and depression, death and grief, developmental psychology, etc.).

Until July of 2020, psychologists were required to complete 4 of the 40 total hours of continuing education on topics relating to domestic violence, child abuse, and elder abuse. At the request of some licensees, the Board eliminated that requirement through a rulemaking effective July 4, 2020. In doing so, the total number of required hours remained at 40. Similarly, the proposed requirement of 4 hours of diversity topics would be a subset of the 40 required hours - not an addition to the 40 required hours. Given the availability, accessibility, and consistent pricing of the courses offered by the American Psychological Association, it appears we can infer that the net effect to the licensees would be \$0.

Regards,

A handwritten signature in cursive script that reads "Heidi Herbst Paakkonen".

Heidi Herbst Paakkonen, M.P.A.
Executive Director



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DOUGLAS A. DUCEY
Governor

HEIDI HERBST PAAKKONEN, M.P.A.
Executive Director

Regular Session Meeting Minutes
(Corrected 1.2022)

Held virtually via Zoom on March 12, 2021

Board Members

Diana Davis-Wilson, DBH, BCBA – Chair
Bryan Davey, Ph.D., BCBA-D – Vice-Chair
Mathew A. Meier, Psy.D. – Secretary
Linda Caterino, Ph.D.
Aditya Dynar, Esq.
Stephen Gill, Ph.D.
Melanie Laboy, Esq.
Ramona N. Mellott, Ph.D.
Tamara Shreeve, MPA

1. CALL TO ORDER

Chairwoman Davis-Wilson called the Board's meeting to order at 8:32 a.m.

2. ROLL CALL

The following Board members participated in the virtual meeting: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was absent: Ms. Laboy.

ALSO PRESENT

The following Board staff participated in the virtual meeting: Heidi Herbst Paakkonen, Executive Director; Jennifer Michaelson, Deputy Director; Jeanne Galvin, Assistant Attorney General (AAG); Kathy Fowkes, Licensing Specialist; Krishna Poe, Programs and Projects Specialist; and, Andrea Cisneros, Minutes Administrator.

3. REMARKS/ANNOUNCEMENTS

This item was considered around 8:33 a.m.

● **Board Surveys**

Chairwoman Davis-Wilson encouraged meeting attendees to provide feedback by contacting Board staff and completing a Board Meeting Assessment Survey.

● **Board Member and Staff Appreciation**

Chairwoman Davis-Wilson acknowledged and thanked Board members and staff for their hard work and efforts.

● **Continuing education credit for Board meeting attendance**

Chairwoman Davis-Wilson announced that meeting attendees were eligible for continuing education credit. She stated that codewords would be provided throughout today's meeting that attendees are to email Board staff within one week of the meeting to receive the credit.

- **Student Intern Introductions**

Elizabeth Bronold

Caitlin Doherty

Ms. Bronold and Ms. Doherty participated in the virtual meeting and reported on their internship progress and their respective areas of research. Executive Director Herbst Paakkonen reported that Ms. Bronold and Ms. Doherty have been very professional and eager, and that both have met or exceeded established milestones throughout the internship process. She informed the Board that Ms. Bronold and Ms. Doherty will present their projects to the Board at a future meeting. The Board welcomed them both to the team.

4. CALL TO THE PUBLIC

This item was considered around 8:41 a.m.

No individuals addressed the Board during the Call to the Public.

5. COUNSEL UPDATE

This item was considered around 8:42 a.m.

AAG Galvin reported that the matter involving Dr. Sadeh is in Superior Court and that the State's answering brief on the Board's behalf is due next month.

6. CONSENT AGENDA - DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION

The Consent Agenda was considered around 8:42 a.m.

MOTION: Vice-Chairman Davey moved for the Board to approve the items as listed under the Consent Agenda.

SECOND: Mr. Dynar

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill and Ms. Shreeve. The following Board member was absent: Ms. Laboy and Dr. Mellott.

VOTE: 7-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

A. APPROVAL OF MINUTES

- February 12, 2021 Regular Session Minutes
- February 12, 2021 Executive Session Minutes
- September 4, 2020 Regular Session Minutes (proposed revisions)

B. EXECUTIVE DIRECTOR'S REPORT

C. DISCUSSION/DECISION REGARDING PSYCHOLOGIST APPLICATIONS

Requesting Approval to Sit for Examination (EPPP) Only

- 1) Denisha E. Liggett, Psy.D.
- 2) Jessica J. Moore, Psy.D.
- 3) Jodi Tichi, Psy.D.
- 4) Luis R. Sanchez, Ph.D.
- 5) Michele E. Stathatos, Ph.D.
- 6) Minja Vallo, Psy.D.

Requesting Approval to Sit for Examination (EPPP) & Licensure

- 1) Amy Leigh Becker, Psy.D.
- 2) Dawn M. Wear, Ph.D.
- 3) Eva Marie Nicolas, Psy.D.
- 4) Tessa Hamilton, Ph.D.
- 5) Veronica Poore, Psy.D.

Requesting Approval for Licensure by Waiver

- 1) Rosemary Hodges, Ph.D.

Requesting Approval for Licensure by Credential

- 1) Carla Natalucci-Hall, Psy.D.
- 2) Sarah Banks, Ph.D.

Requesting Approval of Temporary Licensure and to Sit for EPPP

- 1) Oksana Skyarov, Psy.D.

Requesting Approval for Licensure by Universal Recognition

- 1) Jeannette Higgins, Psy.D.
- 2) Nicole Ridout, Psy.D.

D. DISCUSSION/DECISION REGARDING BEHAVIOR ANALYST APPLICATIONS

- 1) Adriana Diaz, M.Ed.
- 2) Alannah Coley, Eisenmann
- 3) Elizabeth Johnson, M.S.
- 4) Joseph Michael Kamen, M.S.
- 5) Kate Horner, M.S.
- 6) Kelsey Erdmann, M.Ed.
- 7) Kylie Cairen Holt, M.S.
- 7) Lloyd Gilbert, M.S.
- 8) Madeline Roznos, M.S.Ed.
- 9) Steven Hassien, M.Ed.
- 10) Terri Ann Yonge Julian, M.Ed.
- 11) Tessa Grabowsky, M.S.
- 12) Yarelis Lopez Alvarez, M.S.
- 13) Franchesca M. Moore, M.A.
- 14)

E. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION REGARDING THIRD REQUEST TO RETAKE EPPP FROM BENIUS M. BEARD, PSY.D., TEMPORARY LICENSE HOLDER TL-27.

F. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION REGARDING APPLICATION FOR EXAM AND LICENSURE FROM JEFFREY S. MINTERT, PH.D.

G. DISCUSSION, CONSIDERATIONS, AND POSSIBLE ACTION REGARDING APPLICATION FOR TEMPORARY LICENSURE AND TO SIT FOR THE EPPP FROM XANAT I. MARTINEZ, PSY.D.

TIMED ITEMS – 8:45 A.M.

7. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING ACCEPTANCE OF A PROPOSED LETTER OF CONCERN FOR DR. CAROL GANDOLFO, PSY.D., IN COMPLAINT NO. T-20-08 AND/OR INITIAL CASE REVIEW

This item was considered around 8:47 a.m.

Dr. Gill was recused from the consideration of this matter.

Dr. Gandolfo and Attorneys Larry Cohen and Jonathan Riches participated in the virtual meeting during the Board's consideration of this matter.

AAG Galvin reported that this matter was scheduled for initial case review to determine whether Dr. Gandolfo was practicing psychology in Arizona without a license. She stated the parties negotiated the possible settlement of a Letter of Concern for the Board's consideration. AAG Galvin asked the Board to consider accepting the proposed settlement and vacate the initial case review to resolve this matter.

Mr. Riches reported that Dr. Gandolfo has been a licensed psychologist and family therapist in California for over 20 years. He stated that they provided voluminous documentation that demonstrated Dr. Gandolfo has not engaged in the unlawful practice of psychology. Mr. Riches stated that Dr. Gandolfo provided consulting services to institutional entities located in California and explained that these consultation services did not involve treatment of patients or delivery of any psychology services. He assured the Board that the services were provided in California where Dr. Gandolfo holds licensure and asked the Board to approve the proposed Letter of Concern to resolve this matter.

Dr. Meier observed that the address provided for the consulting services is located in Sedona, Arizona, and he questioned whether those services were provided to the California entities telephonically while Dr. Gandolfo was physically present in Arizona. Mr. Riches stated that some of the consulting services were provided via email and mail, but could not say whether they were conducted over the phone. Dr. Meier stated his concerns regarding the allegations of practicing psychology without a license if the consulting services were being provided by Dr. Gandolfo while she was in Arizona. AAG Galvin clarified that the entities with which Dr. Gandolfo was consulting were located in California where she was and remains licensed.

Ms. Shreeve questioned whether consulting services were provided to entities or individuals located in Arizona, noting that the information gathered during the investigation showed that Dr. Gandolfo had been providing services to the Sedona Fire Department. Dr. Meier pointed out that documentation submitted by the Sedona Fire Department indicated that Dr. Gandolfo provided peer support services and did not represent herself as a licensed psychologist. Dr. Meier stated that he remained concerned that Dr. Gandolfo may have been practicing telepsychology in Arizona without a license. Mr. Riches reiterated that they provided voluminous documentation to demonstrate that Dr. Gandolfo was not providing psychology services.

MOTION: Ms. Shreeve moved for the Board to vacate the initial case review in this matter and accept the Letter of Concern as final adjudication.

SECOND: Chairwoman Davis-Wilson

Dr. Meier stated his concerns that it was unclear whether psychology services were provided telephonically to the California entity while Dr. Gandolfo was located in Arizona.

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Caterino, Mr. Dynar, Ms. Shreeve. The following Board member voted against the motion: Dr. Meier. The following Board members were absent: Ms. Laboy and Dr. Mellott.

VOTE: 5-yay, 1-nay, 0-abstain, 1-recuse, 2-absent.

MOTION PASSED.

8. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION TO APPROVE THE COMMITTEE ON BEHAVIOR ANALYSTS RECOMMENDATION TO ISSUE A NON-DISCIPLINARY LETTER OF CONCERN AND ORDER FOR CONTINUING EDUCATION AND SELF-STUDY TO DYLAN HUFF, M.ED., FOR COMPLAINT NO. 20-51 AND/OR INITIAL CASE REVIEW

This item was considered around 9:02 a.m. at which time Dr. Mellott joined the virtual meeting.

Deputy Director Michaelsen reported that a complaint was filed by the attorney of a client's mother regarding the individuals involved in Agenda Item Nos. 8 and 9, Mr. Dylan Huff and Ms. Paige Huff. The parties were present with Attorney Mandi Karvis and participated in the virtual meeting during the Board's consideration of this matter. Deputy Director Michaelsen summarized that the complaint alleged that Mr. Huff authored a transition of care letter for the client which contained information about the client's mother that she felt portrayed her in an unfavorable light. The complaint also alleged that Ms. Huff engaged in unlicensed practice and provided supervision to individuals employed and those pursuing licensure. The CBA reviewed the cases and recommended issuance of a Letter of Concern and that Ms. Paige be granted licensure contingent upon entering into a consent agreement with the Board.

Ms. Karvis stated that they support the recommendations from the CBA regarding both matters. She stated that her clients have already addressed the concerns raised in this case and have taken action to address clearing up roles within the organization and with respect to documentation issues. Ms. Karvis stated that Mr. and Ms. Huff have been open and forthcoming with the Board about their practice shortcomings and areas of improvement, and have started looking into courses and organizations that they were recommended to join to help further their business to ensure compliance with regulation and statutes.

Dr. Caterino questioned whether students supervised by Ms. Huff were affected by the fact that she was not licensed during that time. The Board observed that the individuals that were supervised by Ms. Huff were direct line staff that were not working towards certification.

MOTION: Ms. Shreeve moved for the Board to accept the Letter of Concern and Order for CE and self-study for Mr. Huff, and to refer this matter to the BACB.

SECOND: Vice-Chairman Davey

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was absent: Ms. Laboy.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

The Board observed that the complainant reported concerns that clients were not aware that Ms. Huff was not licensed or that she was being supervised and was not able to practice independently. The Board also noted that Ms. Huff listened to the Committee's concerns and has since updated the information on their website that could have been misleading to the public.

MOTION: Vice-Chairman Davey moved for the Board to grant licensure for Ms. Huff with a Consent Agreement stipulating 12 months' probation to engage in practice monitoring and CE, and to refer this matter to the BACB and the Texas Board. Ms. Huff shall obtain a Board-approved practice monitor within 90 days of the effective date of the Board's Order.

SECOND: Ms. Shreeve

The Board encouraged Ms. Huff to engage with the Executive Director and Board staff in the event she encountered difficulties with the practice monitor requirement. Chairwoman Davis-Wilson stated her appreciation for the parties' eagerness to continue to learn through this process and further stated that they truly modeled professionalism and ability to demonstrate what can be done to turn this situation into a great opportunity for self-improvement.

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was absent: Ms. Laboy.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

9. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION TO APPROVE THE COMMITTEE ON BEHAVIOR ANALYSTS RECOMMENDATION TO APPROVE PAIGE HUFF'S APPLICATION FOR LICENSURE AS A BEHAVIOR ANALYST WITH THE ISSUANCE OF A SIGNED CONSENT AGREEMENT FOR COMPLAINT NO. 20-52 AND/OR INITIAL CASE REVIEW

The Board considered this matter in conjunction with Agenda Item No. 8. Please see the discussion captured under Agenda Item No. 8 for more details.

10. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION REGARDING COMPLAINT NO. 21-10 AGAINST DON AXSOM, PSY.D.

This item was considered around 9:20 a.m.

Dr. Axsom and Attorney Mandi Karvis participated in the virtual meeting during the Board's consideration of this matter.

Deputy Director Michaelsen summarized that the Board received an ASPPB report indicating that Dr. Axsom surrendered his Missouri license in May of 2020 for misconduct involving a client. The case was initiated and Dr. Axsom responded timely. After retaining counsel, Dr. Axsom indicated his desire to voluntarily surrender his Arizona license. Thereafter, Dr. Axsom was offered a proposed Consent Agreement for surrender of licensure, which he signed and returned to the Board. Deputy Director Michaelsen informed the Board that acceptance of the proposed Consent Agreement would resolve the case and will become effective April 1, 2021 to allow time for patient transfers. She also reported that the surrender is disciplinary action and therefore will be reported to the national databank.

Ms. Karvis stated that the psychologist understood the nature of the allegations against him in Missouri and recognized that he made poor choices in that regard. She stated that he ultimately surrendered his Missouri license and was willing to do the same in Arizona. Ms. Karvis asked the Board to accept the proposed Consent Agreement. She clarified that by allowing the surrender to become effective on April 1st provided Dr. Axsom with sufficient time for proper transition of clients.

MOTION: Dr. Caterino moved for the Board to accept the proposed Consent Agreement for Surrender of Licensure.

SECOND: Dr. Meier

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was absent: Ms. Laboy.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

THE FOLLOWING AGENDA ITEMS ARE UNTIMED AND MAY BE DISCUSSED AND DECIDED UPON AT VARIOUS TIMES THROUGHOUT THE MEETING AT THE DISCRETION OF THE CHAIR

11. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING JURISPRUDENCE LEARNING TOOL PROPOSAL

This item was considered around 10:27 a.m.

Executive Director Herbst Paakkonen reported that the learning tool proposal has been modified per the Board's prior discussion at its January 2020 meeting, and has been redesigned as a learning exercise with feedback rather than a strict examination. She stated that the Board had the option of investing \$5,000 annually to decrease the cost for purposes of reducing the licensees' fee from \$40 to \$35, and the proposal requires a start-up investment of \$5,000. Executive Director Herbst Paakkonen further reported on the recommendation to designate a certain number of CE credits to completion of this tool rather than impose new costs on top of the existing CE requirements.

Matt Turner, Ph.D., participated in the virtual meeting on behalf of Revolution AMC during the Board's consideration of this matter, presented to the Board on the proposed jurisprudence learning tool as modified per the Board's direction at its January 2020 meeting, and answered Board members' questions. The Board discussed the costs associated with initial startup and for the individuals to take the educational tool. The Board also discussed whether individuals should be required to take the tool at the time of initial licensure versus at the time of license renewal, or both.

Ms. Shreeve pointed out that the Board was seeking such a learning tool due to a number of cases adjudicated in the past year or two that involved licensees who were not familiar with the statutes and rules that govern their profession, some of which had been practicing for years. Ms. Shreeve emphasized the importance for licensees to stay up to date on current statute and rules, and stated that the proposed learning tool would address these concerns if licensees were required to complete it at the time of license renewal. Mr. Dynar suggested the staff research whether any licensure pathways preclude this type of requirement prior to moving forward. Dr. Meier recalled that the Board had elected to pursue such a learning tool as a form of CEs to allow for the ongoing review of current statutes and rules, rather than requiring its completion at the time of initial licensure.

Dr. Turner clarified that the current proposal would allow the Board to update the tool on an annual basis at which time any changes to the Board's statutes and/or rules could be incorporated at that time. Dr. Meier thanked Dr. Turner for his responsiveness to the feedback from the Board at its prior meeting and stated that the tool proposal looked great. Dr. Gill also thanked Dr. Turner for the proposal and for making the appropriate modifications according to the Board's prior discussion. He stated he liked that the tool focused on education for individuals to become more familiar with Arizona statutes and rules. Dr. Caterino stated she believed the educational tool should apply to all licensees, existing and new. The Board recognized that new licensees would be subject to taking the educational tool at the time of license renewal, which is prorated by the Board and takes place within the first two years of licensure.

Dr. Meier questioned whether there were concerns regarding the Board requiring its licensees to complete CEs that were developed by the Board in the proposed tool. AAG Galvin stated that she would look into this concern and report back to the Board. Dr. Turner clarified that the Board would cover the cost of initial startup and that the fees paid by the individuals taking the tool would not be directed to the Board. Chairwoman Davis-Wilson questioned whether a similar tool would be created for BAs to become more familiar with the statutes and rules that govern their profession. Dr. Turner clarified that the proposed tool applied to the practice of psychology, and stated that it was his understanding that the Board would be considering a similar tool for BAs in the future. Ms. Shreeve spoke in favor of creating a similar tool for BAs, and Chairwoman Davis-Wilson agreed stating that such a tool should be researched.

Dr. Mellott spoke in favor of the proposed tool being used at the time of renewal only. She stated that new licensees are faced with tremendous fees and any additional costs for licensure would become burdensome. Dr. Meier clarified that his focus has been requiring the tool at the time of license renewal only. Mr. Dynar

stated his concerns regarding subsidizing a CE course that the Board will require its licensees to complete. Ms. Shreeve cautioned the Board regarding possible procurement issues. Dr. Turner clarified that one option for the Board is to pay the initial startup cost for the tool, then individuals would pay \$40 to take it, which he believed was a reasonable cost and would not require subsidy from the Board. Mr. Dynar reiterated his concerns regarding the Board funding the startup costs and stated that it was unclear if this was problematic for the Board.

The Board discussed awarding a total of 4 CE credits for completing the tool, noting that a total of 40 CE hours are required for license renewal every two years with 4 credit hours dedicated to CE in ethics.

MOTION: Dr. Meier moved for the Board to approve the proposed jurisprudence learning tool for license renewals and awarding of 4 CE credit hours that can be applied to the hours required for license renewal, for the Board to cover the initial \$5,000 startup fee and licensee's paying \$40 to take it, pending the Executive Director confirming that there are no issues with the Board paying the initial startup fee.

SECOND: Ms. Shreeve

Dr. Mellott suggested the Board review feedback from individuals that have taken the jurisprudence tool on an annual basis. Chairwoman Davis-Wilson recommended finding a vendor that would allow for stopping the individual's progression without clicking the correct answer. Dr. Turner agreed and stated that he will be mindful of this request when choosing a vendor. Mr. Dynar spoke against the motion and stated that the initial development cost was legally problematic.

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member voted against the motion: Mr. Dynar. The following Board member was absent: Ms. Laboy.

VOTE: 7-yay, 1-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

12. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING INFORMATION RECEIVED CONCERNING THE EPPP – PART 2

This item was considered around 11:21 a.m.

Dr. Turner participated in the virtual meeting on behalf of ASPPB during the Board's consideration of this matter.

The Board observed that an article was published in the APA journal that called into question the validity of EPPP Part 2 and that the ASPPB has submitted information to the Board relative to the article and ASPPB's response. Dr. Turner explained that a little over a year ago, ASPPB received word that the APA was publishing the journal that they believe was a shotgun attack on the validation and process for which ASPPB has undertaken and specifically targeted EPPP Part 2 with some questioning of Part 1 and insinuation of test bias. He stated that ASPPB approached the APA and asked that they hold the article until such time that the ASPPB has had an opportunity to author a response article and the APA declined.

Dr. Turner reported that the purpose of the exam is to give licensing boards some assurance that the individual has demonstrated the necessary knowledge and skills to practice. Dr. Turner informed the Board regarding ASPPB's ongoing activities to address any concerns raised by the training community, including the creation of an examination advisors group and an item review panel. Dr. Meier stated he had heard concerns relating to the substantial cost associated with Part 2 as opposed to modifying the current examination to incorporate more of the practice component, and he questioned whether ASPPB could offer test preparation materials to offset and reduce the financial impact of taking Part 2. Dr. Turner reported that Part 2 was implemented when it was determined that incorporating a component regarding competency assessment of knowledge and skills was too long. He stated that he believed the knowledge based examination should take place earlier while the

skills based portion should be done at the time of licensure. He also stated that ASPPB has wanted to start building test preparation materials, but has raised concerns regarding conflict of interest. Dr. Turner stated that ASPPB takes these issues seriously and that in terms of validation, the process is very sound and follows current standards.

The Board thanked Dr. Turner for appearing.

13. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING POSSIBLE ADMINISTRATIVE RULE REVISIONS

a. Incorporating by reference the current version of the Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association

This item was considered around 1:17 p.m.

Joel Dvoskin, Ph.D., ABFP, participated in the virtual meeting during the Board's consideration of this matter, reported on the different versions of the Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association ("APA"). He reported on changes to the APA's Ethical Code of Conduct and policies that were established over the years relative to human rights considerations.

The Board thanked Dr. Dvoskin for his presentation, and discussed whether the Board should update its requirement to follow the previous version versus the current version of the APA's Ethical Codes of Conduct. Dr. Meier proposed incorporating language similar to the BAs requiring licensees to follow the most current code as opposed to changing the Board's rules each time there are amendments made. Ms. Shreeve disagreed and stated that she felt the Board should review any amendments made to the code prior to approving. Dr. Meier pointed out that psychologists are expected to follow the current code of ethics regardless of their location. Chairwoman Davis-Wilson clarified that the language for BAs includes that the most current APA ethics code shall be followed unless otherwise decided upon by the Board.

Ms. Shreeve pointed out that the Board currently requires licensees to follow the 2003 version of the APA's ethics code, and noted that the Board previously discussed concerns relating to the more recent versions in relation to military psychologists. Dr. Mellott commented that the Board must be mindful of any possible conflicts when determining whether to support the current version of the APA's ethics code. Dr. Meier stated that he had significant concerns regarding the Board's current requirement to follow an older version of the APA's ethics code and reiterated his support to incorporate language similar to BAs requiring licensees to follow the most current version unless the Board has determined otherwise. Dr. Mellott proposed that the Board review prior meeting minutes relating to this topic. Chairwoman Davis-Wilson recommended inviting a psychologist who specializes in this area to participate in further discussion with the Board on this topic. Dr. Meier stated that this was a substantial issue that needed to be addressed by the Board. Dr. Caterino spoke in favor of adopting language similar to that of the BAs.

MOTION: Dr. Caterino moved for the Board to adopt language similar to the BAs for licensees to follow the current APA ethics code unless the Board decided otherwise.

SECOND: Dr. Meier

After further discussion among Board members and staff, Drs. Caterino and Meier withdrew their motion. Chairwoman Davis-Wilson instructed staff to research prior meeting minutes for the Board's review in addition to inviting a specialty psychologist to appear before the Board and the documents referenced in Dr. Dvoskin's presentation. The Board tabled this matter and requested it be placed on a future meeting agenda after additional information is obtained for the Board's review and consideration relating to this topic. Mr. Dynar requested staff to provide a red-lined version of the code that outlines changes between the 2003 and current versions.

b. Adopting regulatory language addressing practicing in a capacity not related to the psychology license and/or that prescribes how services are represented

This item was considered around 12:41 p.m.

The Board recalled that this topic was discussed at its January 2021 meeting and a suggestion was made to adopt language similar to that of the BA code of conduct that could address some issues the Board has struggled with in terms of the practice of life coaching. Chairwoman Davis-Wilson clarified that the BA code of conduct requires licensees to disclose any non-evidence based or other practices. Mr. Dynar stated his concerns regarding the statutory language that references the designation of psychologist and suggested the Board consider changing the language to place more emphasis on individuals holding themselves out as holding a license. Dr. Mellott stated that statute currently classifies the use of any derivative of the word “psych” as a violation. Dr. Caterino spoke in favor of the current language and stated that the public may not be familiar with the distinction between a psychologist and licensed psychologist.

The Board noted prior cases involving licensed psychologists providing life coaching services and it was not clear to the consumer which services were being provided. Dr. Gill emphasized the importance to maintain appropriate documentation and written informed consent to clarify the type of services that are being provided and ensure that the client understands the services they are to be receiving. Mr. Dynar commented that licensees providing any service should be held to the same standard of care as a licensed professional. Dr. Meier spoke in favor of adopting language similar to that of the BAs to clarify that there must be a distinction between the services that are being provided by individuals offering services outside of psychology.

Executive Director Herbst Paakkonen reported that AzPA has been hearing these concerns and have formed a work group to dive deeper into this topic. She proposed that the Board table this item until such time that the AzPA has researched this topic and present some possible guidance. The Board elected to table this matter and return at a future meeting with a presentation from AzPA.

The Board recessed from 1:08 p.m. to 1:17 p.m.

c. Designating a portion of the continuing education requirements to the jurisprudence learning tool

This item was considered with Agenda Item No. 11. Please see the discussion and vote captured under Agenda Item No. 11 for further details.

d. Designating a portion of the continuing education requirements to multi-cultural competency content

This item was considered around 11:44 a.m.

Evelyn Burrell, Psy.D., AzPA President Elect, participated in the virtual meeting during the Board’s consideration of this matter and made a presentation to the Board regarding potentially designating a portion of CE requirements to multi-cultural competency content. Jessica Belokas, BCBA, representing the Arizona Association for Behavior Analysis, also participated in the virtual meeting during the Board’s consideration of this matter.

Dr. Burrell reported that the association met recently and discussed the need for our State to focus on diversity to ensure that practitioners are working ethically and effectively, and are culturally competent. She stated there is also a need to make sure that learning opportunities are being offered regularly and that there is an expected growth and understanding of diversity and what it means to be a culturally competent provider. Dr. Burrell informed the Board that AzPA could assist in offering such trainings similar to how they previously implemented CE trainings in ethics, domestic violence and child abuse due to changes in requirements. Dr. Mellott stated that she was very pleased with Dr. Burrell’s work and that she found her training sessions that she attended were great. Dr. Mellott spoke in support of requiring licensees to complete CEs in multi-cultural

competency content.

Dr. Mellott departed from the virtual meeting around 12:00 p.m.

Dr. Gill stated that the presentation was excellent and questioned the number of CE credit hours that should be designated to this topic. Dr. Burrell proposed requiring licensees to designate 4 CEs in this area for the hours required for license renewal. Vice-Chairman Davey stated that there are not a lot of CE courses available that cover this topic and recommended that BAs be required to complete CEs in this area as well. Chairwoman Davis-Wilson spoke in support of requiring licensees to designate CE hours required for license renewal in this topic. She stated concerns that while this topic is currently at the forefront of discussions, professionals may not see the value of this training over time.

Ms. Belokas reported on the AzABA's subcommittees and efforts in developing initiatives. She informed the Board that she is the newly elected Chairperson for the AzABA's Equity Diversion and Inclusion Committee and she spoke in support of creating requirements in this area. Chairwoman Davis-Wilson thanked Ms. Belokas for her report on AzABA's current activities. Dr. Gill commented on the necessity for quality courses that cover this topic. Dr. Burrell stated that quality education is what is expected from these trainings to promote further education and better practice.

Dr. Mellott rejoined the virtual meeting around 12:22 p.m.

The Board discussed the CE hours required for license renewal, and that the Board voted today to require licensees to designate 4 of those areas to the topic of jurisprudence. Mr. Dynar questioned whether requiring diversity training CEs violated Article 2 Section 36 of the Arizona Constitution. AAG Galvin stated that it may not apply in this instance, and that she would be happy to provide the Board with legal advice. Dr. Burrell commented that the requirement for diversity training allows for appropriate treatment to be made when working with various races and cultural backgrounds.

MOTION: Dr. Meier moved for the Board to require designation of 4 CE hours in the subject of multi-cultural competency content for the CEs required for license renewal for psychologists and BAs.
SECOND: Dr. Mellott

Mr. Dynar spoke against the motion and stated that he preferred to wait until the Board had written confirmation from counsel that there were no legal concerns with moving forward.

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member voted against the motion: Mr. Dynar. The following Board member was absent: Ms. Laboy.

VOTE: 7-yay, 1-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

The Board noted that formal rulemaking would be required to implement the change, and Executive Director Herbst Paakkonen reported that proposed rulemaking will take place later this year to address statutory changes that will become effective if matters currently pending legislation are passed and signed into law. Chairwoman Davis-Wilson pointed out that the formal rulemaking process allows for further discussion on these items.

14. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION REGARDING PROPOSED LEGISLATION INCLUDING, BUT NOT LIMITED TO, SB1253, HB2067, HB2128, HB2243, HB2267, HB2433, HB2454, HB2561, SB1482

This item was considered around 2:37 p.m.

The Board observed that SB1253 has successfully passed the Senate and Committee review in the House.

HB2067 involving criminal convictions has passed the House and is currently moving through the Senate. Dr. Meier questioned how HB 2067 would interact with the Board's bill, and AAG Galvin stated that she would research Dr. Meier's concerns and report back to the Board. HB2128, which expands the initial licensure fee waiver based on income and eligibility, has passed the House and may be stalled in the Senate.

HB2267 requires licensure boards on an annual basis to evaluate its fees against their funds to reduce and maintain the Board's fund balance at only 50% of its annual appropriation. This bill passed the House and will be heard next by the Senate Finance committee. Vice-Chairman Davey questioned whether there is a timeframe associated with when the fund balance must be decreased and proposed awarding bonuses to staff in an effort to reduce the balance. Dr. Mellott proposed offering a COVID relief-type package to individuals who have been licensed through the pandemic. Executive Director Herbst Paakkonen reported that such an analysis will take place to adjust the Board's fees after the bill becomes effective, which she anticipates occurring prior to September 1, 2021. Ms. Shreeve spoke in favor of increasing staff salaries. Executive Director Herbst Paakkonen reported that staff salary adjustments were included in this year's budget and that the Governor's Office recently lifted the previous prohibition from implementing such a change.

HB2454 regarding the expansion of telehealth services and allowing individuals licensed elsewhere to provide such services to Arizona residents provided that they register with their respective regulatory authority in this State. Executive Director Herbst Paakkonen explained that the registry process will create more work for staff and that the bill will come before the Board again at a future meeting for further discussion. HB2561 involving the PCSAS accreditation has passed the House and has been stalled in the Senate. SB1149 has been signed into law and requires the Board to issue licenses to individuals applying through this pathway who meet the requirements.

15. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION REGARDING FUTURE TERMINATION OF TEMPORARY LICENSES GRANTED PURSUANT TO §32-3124, AND TEMPORARY LICENSE EXEMPTIONS AUTHORIZED BY BOTH A.R.S. § 32-2075(A)(4) AND BY A.R.S. § 32-2091.08(4)

This item was considered around 2:54 p.m.

The Board observed that temporary licenses have been issued for the duration of the state of emergency, and discussed how to prevent a sudden or abrupt stop to an individual's practice when the state of emergency is rescinded to allow for a grace period to arrange for patient transfers. The Board also discussed temporary license exemptions authorized by statute. Ms. Shreeve spoke in support of allowing for a grace period in order to transfer patients. Dr. Gill suggested communicating with the Governor's Office regarding how the lifting of the state of emergency would impact the profession. Mr. Dynar stated his concerns regarding the Board's ability to extend licensure waivers beyond the declared state of emergency.

Chairwoman Davis-Wilson noted that the federal state of emergency has been extended to the end of April, and suggested the Board revisit this topic at its April 2021 meeting. Executive Director Herbst Paakkonen reported that the April agenda will also include a topic related to the Governor's Executive Order 2021-02.

16. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION REGARDING STATUS OF VACANT POSITION ON BOARD

This item was tabled to a future Board meeting.

17. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION ON CLAIMS REVIEW PROCESS ESTABLISHED BY A.R.S. § 32-2081

This item was tabled to a future Board meeting.

18. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING LICENSURE AND REGULATORY ISSUES RELATIVE TO COVID-19

This item was considered around 3:09 p.m.

Executive Director Herbst Paakkonen reported that some boards have returned to in-person meetings, including some that allow for in-person and remote participation. She stated that Board staff has discussed potentially holding hybrid sessions, but had identified concerns regarding reliability issues with the technology needed to facilitate such. Dr. Mellott reported that she is not permitted to travel officially at this time and that it would be difficult for her to attend any in-person sessions until such restrictions are lifted in her area.

The Board recognized that any in-person sessions would need to be accessible to the public and that while Board members and staff may have received the vaccine by the time the Board meets in person, the same may not be true for the public wishing to attend the Board's meetings. Ms. Shreeve suggested that the Board table this discussion until the Summer. Dr. Gill encouraged individuals receiving the vaccine to maintain their own record of it as confirmation. Mr. Dynar spoke in favor of tabling this discussion until a later time. Chairwoman Davis-Wilson stated that the current process was working well, and that staff would continue to monitor the situation and report any new developments back to the Board at a future meeting.

19. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION ON REQUEST TO WAIVE APPLICATION REQUIREMENT OF EPPP PART 2 – SKYLER LEONARD, Ph.D.

This item was considered around 9:38 a.m.

Dr. Leonard participated in the virtual meeting during the Board's consideration of this matter.

Ms. Fowkes reported that Dr. Leonard has submitted a request for a waiver of the licensing requirement to pass EPPP Part 2. She stated that Dr. Leonard has passed EPPP Part 1 and is eligible for licensure in Oregon, but received a job offer in Arizona. Dr. Leonard currently does not hold licensure in any other jurisdiction. The Board observed that in July of 2020, the Board determined that anyone applying for Arizona licensure after November 1, 2020 are required to take EPPP Part 2 in order to qualify for licensure if they have only taken EPPP Part 1 and are not licensed in any other jurisdiction. Ms. Fowkes clarified that Dr. Leonard was seeking the waiver since he is eligible for licensure in Oregon without having to take EPPP Part 2. Ms. Fowkes also pointed out that modification of the licensing application was warranted to clarify that a waiver was available for individuals who have passed EPPP Part 1 and are licensed elsewhere, as it does not specify in its current form that the individual must be licensed elsewhere. She stated that the waiver would no longer apply, and individuals would have an opportunity to apply for licensure under examination to take EPPP Part 2.

Dr. Gill pointed out that ASPPB recommended candidates be exempt from EPPP Part 2 if they passed Part 1 prior to December of 2019. The Board noted that Dr. Leonard passed Part 1 on December 19, 2019. Dr. Meier stated that the Board has already set forth rules that require individuals to take EPPP Part 2 if they have passed Part 1 but are not licensed elsewhere.

MOTION: Dr. Mellott moved for the Board to enter into Executive Session to obtain legal advice pursuant to A.R.S. § 38-431.03(A).

SECOND: Mr. Dynar

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was absent: Ms. Laboy.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

The Board entered into Executive Session at 9:47 a.m.

The Board returned to Open Session at 9:54 a.m.

No legal action was taken by the Board during Executive Session.

Dr. Mellott stated that Dr. Leonard would be required to take EPPP Part 2 in order to become eligible for

Arizona licensure according to the Board's current requirements. She proposed that Dr. Leonard either change the application to examination licensure and take Part 2 or withdraw his license application. Dr. Meier pointed out that Dr. Leonard would be eligible for Arizona licensure without having to take Part 2 if he first obtained licensure in Oregon and then reapplied to this Board. Chairwoman Davis-Wilson clarified that Dr. Leonard currently does not have a pending application for Arizona licensure, and was only seeking guidance as to whether he would be required to take EPPP Part 2 in order to obtain an Arizona license.

MOTION: Dr. Meier moved for the Board to deny the request for waiver of the licensing requirement to take EPPP Part 2.

SECOND: Dr. Caterino

The Board clarified that this was not a formal license denial, but rather, a denial of the request to waive the licensing requirement for the individual to complete EPPP Part 2 in order to become eligible for Arizona licensure.

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was absent: Ms. Laboy.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

20. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING THE COMMITTEE ON BEHAVIOR ANALYSTS RECOMMENDATION TO OPEN A COMPLAINT AGAINST JEFFREY SIEGEL, BCBA, LICENSED BEHAVIOR ANALYST

This item was considered around 3:16 p.m.

Deputy Director Michaelsen reported that Board staff and an applicant for behavior analyst licensure were not successful in contacting the applicant's former supervisor, Jeffrey Siegel, to obtain supervisor verification documentation. The CBA asked the Board to consider initiating a complaint against Mr. Siegel. The Board noted that the applicant's file remained incomplete without any verification documentation. Mr. Siegel later responded on February 22nd and submitted the supervise work experience forms for the applicant. The Board observed that Mr. Siegel last renewed his license in May of 2020, and that his contact information in the Board's database regarded a Phoenix location while the forms recently submitted by Mr. Siegel included a California address.

MOTION: Vice-Chairman Davey moved for the Board to initiate an investigation against Mr. Siegel based on violations of A.R.S. § 32-2091.12(K), (BB), and (DD).

SECOND: Ms. Shreeve

Chairwoman Davis-Wilson stated that the CBA was concerned regarding the delay in the applicant's ability to obtain verification of their supervision hours.

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was absent: Ms. Laboy.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

21. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING THE COMMITTEE ON BEHAVIOR ANALYSTS RECOMMENDATION TO OPEN A COMPLAINT AGAINST BRANDY COLLINS, BCBA

This item was considered around 3:21 p.m.

Deputy Director Michaelsen reported that the CBA reviewed an application that contained information indicating that Ms. Collins had provided remote supervision for the Arizona license candidate. Ms. Collins is licensed in Texas and does not hold Arizona licensure. The CBA recommended that the Board open a complaint for Ms. Collins practicing without a license by providing remote supervision for the Arizona applicant. Chairwoman Davis-Wilson observed that the supervision was being provided for an individual that was providing services to patients in Arizona.

MOTION: Chairwoman Davis-Wilson moved for the Board to initiate an investigation against Ms. Collins for possible violation of A.R.S. § 32-2091.12(A).

SECOND: Vice-Chairman Davey

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was absent: Ms. Laboy.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

22. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING APPLICATION FOR APPROVAL TO SIT FOR THE EPPP AND LICENSURE UPON A PASSING SCORE FROM CARLOS O. CALDERON, PH.D.

This item was considered around 8:44 a.m.

Dr. Caterino was recused from this matter.

Dr. Meier reported that the applicant graduated from ASU in 2012 in education psychology and has completed 1,500 internship hours.

MOTION: Dr. Meier moved for the Board to approve the application to sit for EPPP and licensure upon a passing score.

SECOND: Dr. Gill

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was recused: Dr. Caterino. The following Board members were absent: Ms. Laboy and Dr. Mellott.

VOTE: 8-yay, 0-nay, 0-abstain, 1-recuse, 2-absent.

MOTION PASSED.

23. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING APPLICATION FOR APPROVAL TO SIT FOR THE EPPP AND LICENSURE UPON A PASSING SCORE FROM RACHELLE C. BEARD, PH.D.

This item was considered around 9:26 a.m.

Dr. Mellott reported that the Application Review Committee was unable to review this matter due to lack of a quorum, as Dr. Caterino is recused. The Board observed that the applicant obtained her doctoral degree in school psychology at ASU in a program that is no longer available, but at the time was accredited and met the appropriate requirements. The Board also noted that the applicant has completed over 3,000 internship hours.

MOTION: Dr. Mellott moved for the Board to approve the application to sit for EPPP and licensure upon a passing score.

SECOND: Dr. Meier

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was recused: Dr. Caterino. The following Board member was absent: Ms. Laboy.

VOTE: 7-yay, 0-nay, 0-abstain, 1-recuse, 1-absent.

MOTION PASSED.

24. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING APPLICATION FOR APPROVAL TO SIT FOR THE EPPP AND LICENSURE UPON A PASSING SCORE FROM MARVIN JIM, PH.D.

This item was considered around 9:58 a.m.

Dr. Mellott reported that the application was complete, but questions were raised regarding a series of criminal convictions that occurred over 15 years ago. She stated that the Committee wanted Dr. Jim to appear before the Board to expand on how his life has changed since the prior events took place and how the Board can be assured there will be no reoccurrence of past events. Dr. Jim stated that he accepted the repercussions of his past behaviors.

MOTION: Dr. Caterino moved for the Board to enter into Executive Session to review and discuss confidential health information pursuant to A.R.S. § 38-431.03(A)(2).

SECOND: Ms. Shreeve

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was absent: Ms. Laboy.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

The Board entered into Executive Session at 10:02 a.m.

The Board returned to Open Session at 10:12 a.m.

No legal action was taken by the Board during Executive Session.

Dr. Mellott spoke in favor of approving the application in light of Dr. Jim's explanations and the information received by the Board, and given the applicant's remediation efforts and commitment to public safety while maintaining his health and ability to practice as a psychologist.

MOTION: Dr. Mellott moved for the Board to approve the application to sit for the EPPP and licensure upon a passing score for Dr. Jim.

SECOND: Dr. Meier

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was absent: Ms. Laboy.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

The Board recessed from 10:14 a.m. to 10:27 a.m.

25. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING APPLICATION FOR TEMPORARY LICENSURE AND TO SIT FOR THE EPPP FROM WEI LUO, PH.D.

This item was considered around 9:32 a.m.

Dr. Mellott was recused from this matter.

Dr. Caterino reported that Dr. Luo applied for temporary licensure and to sit for the EPPP, and that the only information missing from the application was his predoctoral practicum training plan. Ms. Fowkes clarified that a training plan is typically not needed for temporary licensure, and confirmed that the Board received Dr. Luo's postdoctoral training agreement that is required for temporary licensure.

MOTION: Dr. Caterino moved for the Board to approve the application for temporary licensure and to sit for the EPPP for Dr. Luo.

SECOND: Ms. Shreeve

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill and Ms. Shreeve. The following Board member was recused: Dr. Mellott. The following Board member was absent: Ms. Laboy.

VOTE: 7-yay, 0-nay, 0-abstain, 1-recuse, 1-absent.

MOTION PASSED.

26. NEW AGENDA ITEMS FOR FUTURE MEETINGS

This item was considered around 3:25 p.m.

Mr. Dynar requested staff provide court filings in the Board's meeting packet relative to matters being reported on under the Legal Advisor's Report.

Chairwoman Davis-Wilson noted that a number of topics were discussed during today's meeting that shall be placed on a future agenda along with items that were tabled.

27. ADJOURNMENT

MOTION: Dr. Meier moved for the Board to adjourn.

SECOND: Ms. Shreeve

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was absent: Ms. Laboy.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

The Board's meeting adjourned at 3:27 p.m.

Respectfully submitted,



Matt Meier, Psy.D.
Secretary



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 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

Authority: A.R.S. § 32-2063(A)(9) and (12)

Supp. 21-3

Editor's Note: This Chapter contains amendments that were filed with the Secretary of State on March 3, 1995. At the time of filing, the original copy of the rulemaking package differed from the copy of the package filed at the same time. The Secretary of State uses the copy to prepare the Code supplement. The agency notified the Secretary of State that the wrong version was used. That led to the Secretary of State's discovery of the two versions filed in March 1995. The Secretary of State then used the original package to publish a corrected edition with Supp. 95-2. The Secretary of State has since been advised by the Attorney General that the original version as published with Supp. 95-1 was correct with the exception of one phrase in R4-26-207 that was inadvertently omitted. With this publication, this Chapter reflects the correct amendments, and the omitted phrase in R4-26-207 has now been added.

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CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

ARTICLE 1. GENERAL PROVISIONS

R4-26-101. Definitions

- A. The definitions in A.R.S. § 32-2061 apply to this Chapter.
- B. Additionally, in this Chapter:
1. "Additional examination" means an examination administered by the Board to determine the competency of an applicant and may include questions about the applicant's knowledge and application of Arizona law, the practice of psychology, ethical conduct, and psychological assessment and treatment practices.
 2. "Administrative completeness review" means the Board's process for determining that an applicant has provided all of the information and documents required by the Board to determine whether to grant a license to the applicant.
 3. "Advertising" means any media used to disseminate information regarding the qualifications of a psychologist or to solicit clients or patients for psychological services, regardless of whether the psychologist pays for the advertising. Methods of advertising include a published statement or announcement, directory listing, business card, personal resume, brochure, or any electronic communication conveying the psychologist's professional qualifications or promoting use of the psychologist's professional services.
 4. "Applicant" means an individual requesting licensure, renewal, or approval from the Board.
 5. "Application packet" means the forms and documents the Board requires an applicant to submit to the Board.
 6. "Applied psychology," as used in A.R.S. § 32-2071(A), means the practice of psychology in the area of health service delivery. The Board shall consider education and training in applied psychology as qualification for licensure only if the education and training meet the standards specified in A.R.S. § 32-2071.
 7. "Case," in the context of R4-26-106 (G), means a legal cause of action instituted before an administrative tribunal or in a judicial forum that relates to a psychologist's practice of psychology.
 8. "Case conference" means a meeting that includes the discussion of a particular client or patient or case that is related to the practice of psychology.
 9. "Client or patient record" means "adequate records" as defined in A.R.S. § 32-2061(2), "medical records" as defined in A.R.S. § 12-2291 (6), and all records pertaining to assessment, evaluation, consultation, intervention, treatment, or the provision of psychological services in any form or by any medium.
 10. "Complaint Screening Committee" means the committee of the Board established under A.R.S. § 32-2081 (H) to conduct an initial review of all complaints.
 11. "Confidential record" means:
 - a. Minutes of an executive session of the Board;
 - b. A record that is classified as confidential by a statute or rule applicable to the Board;
 - c. All materials relating to an investigation by the Board, including a complaint, response, client or patient record, witness statement, investigative report, and any other information relating to a client's or patient's diagnosis, treatment, or personal or family life; and
 - d. The following regarding an applicant or licensee:
 - i. College or university transcripts;
 - ii. Home address, home telephone number, and e-mail address;
 - iii. Examination scores;
 - iv. Date of birth v. Place of birth;
 - vi. Social Security number; and
 - vii. Candidate identification number for the national examination required under A.R.S. § 32-2072(A).
 12. "Credentialing agency" means the Association of State and Provincial Psychology Boards, the National Register of Health Service Providers in Psychology, or the American Board of Professional Psychology.
 13. "Day" means a calendar day except in A.R.S. § 32-2075(A)(4), "day" means a total of eight hours in providing psychological services regardless of the number of calendar days over which the hours are accumulated.
 14. "Diplomate or specialist" means a status bestowed on a person by the American Board of Professional Psychology after successful completion of the work and examinations required.
 15. "Directly available," as used in A.R.S. § 32-2071 (F)(2), means immediately available in person or by telephone or electronic transmission.
 16. "Disaster," as used in A.R.S. § 32-2075(A)(4), means a contingency or situation for which the governor declares a state of emergency under the authority provided at A.R.S. § 35-192. The Board acknowledges any state of emergency declared by the governor or determined by the Board.
 17. "Dissertation" means a document prepared as part of a graduate doctoral program that includes, at a minimum, separate sections that:
 - a. Review the literature on the psychology topic being investigated and state each research question and hypothesis under investigation;
 - b. Describe the method or procedure used to investigate each research question or hypothesis;
 - c. Describe and summarize the findings and results of the investigation;
 - d. Discuss the findings and compare them to the relevant literature presented in the literature review section; and
 - e. List the references used in the various sections of the dissertation, a majority of which are either journals of the American Psychological Association, Psychological Abstracts, or classified as a psychology subject by the Library of Congress.
 18. "Fellow" means a status bestowed on a person by a psychology association or society.
 19. "Gross negligence" means an extreme departure from the ordinary standard of care.
 20. "Internship training program" means the supervised professional experience required in A.R.S. § 32-2071 (F).
 21. "Last client or patient activity," as used in R4-26-106, means the last date a particular client or patient received direct clinical contact from the psychologist retaining the client's or patient's record.
 22. "License period" means:
 - a. For a licensee who holds an odd-numbered license, the two years between the first day of the month after the licensee's birth month of one odd-numbered year and the last day of the licensee's birth month of the next odd-numbered year; and
 - b. For a licensee who holds an even-numbered license, the two years between the first day of the month after the licensee's birth month of one even-numbered year and the last day of the licensee's birth month of the next even-numbered year.

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23. "National examination" means the Examination for Professional Practice in Psychology provided by the Association of State and Provincial Psychology Boards.
24. "Party" means the Board, an applicant, a licensee, or the state.
25. "Practice monitor," as used in R4-26-310, means a Board-approved licensed psychologist who monitors or oversees the remediation of the practice of another psychologist as part of a disciplinary process.
26. "Primarily psychological," in the context of A.R.S. § 32-2071(A)(6), means subject matter that covers the practice of psychology as defined in A.R.S. § 32-2061 (9).
27. "Psychologist on staff," as used in A.R.S. § 32-2071(F)(2), means a psychologist who is designated by the staff psychologist specified in A.R.S. § 32-2071(F)(1) to fulfill the responsibilities of a supervising psychologist in the training program.
28. "Psychometric testing" means measuring cognitive and emotional processes and learning through the administration of psychological tests.
29. "Raw test data" means test scores, client or patient responses to test questions or stimuli, and notes and recordings concerning client or patient statements and behavior during a psychologist's assessment and evaluation.
30. "Regulatory jurisdiction" means a state or territory of the U.S., the District of Columbia, or a foreign country with authority to grant or deny entry into a profession or occupation.
31. "Renewal year" means:
 - a. Each odd-numbered year for a licensee who holds an odd-numbered license, and
 - b. Each even-numbered year for a licensee who holds an even-numbered license.
32. "Retired," as used in A.R.S. § 32-2073 (G), means a psychologist has stopped practicing psychology, as defined in A.R.S. § 32-2061 (9).
33. "Stipend" means a fee paid to a supervisee that is not based on productivity or revenue generated.
34. "Substantive review" means the Board's process for determining whether an applicant meets the requirements of A.R.S. § 32-2071 through § 32-2076 and this Chapter.
35. "Successfully completing," as used in A.R.S. § 32-2071(A)(4), means receiving a passing grade in a course from an institution of higher education.
36. "Supervision," as used in R4-26-310, means review and oversight of the professional work of a psychologist by a Board-approved licensed psychologist as part of a disciplinary process.
37. "Supervise" means to control, oversee, and review the activities of an employee, intern, trainee, or resident who provides psychological services.
38. "Supervisor," as referenced in A.R.S. § 32-2071(F)(2), means an individual who is:
 - a. Licensed or registered as a psychologist at the independent level in the regulatory jurisdiction in which the supervision occurs,
 - b. On staff as a supervisor with the training program for which supervision is provided, and
 - c. Directly available to the supervisee in case of an emergency or ensures another supervisor is directly available to the supervisee.
39. "Year," as used in A.R.S. § 32-2075(A)(4) means a calendar year.

Historical Note

Former Rule 1; Former Section R4-26-01 repealed, new Section R4-26-01 adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981 (Supp. 81-3). Former Section R4-26-101 renumbered to R4-26-102; new Section R4-26-101 adopted effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 737, effective February 19, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

R4-26-102. Board Officers

- A. Under A.R.S. § 32-2063(A)(8), the Board shall annually elect a chairperson, vice chairperson, and secretary.
- B. Officers elected under subsection (A) shall take office on January 1 following election and serve until December 31.
- C. If a vacancy occurs in the office of chairperson, vice chairperson, or secretary, the Board shall elect a replacement officer at the next scheduled Board meeting.

Historical Note

Former Rule 2; Amended effective November 22, 1977 (Supp. 77-6). Repealed effective September 15, 1978 (Supp. 78-5). New Section R4-26-02 adopted effective July 27, 1979 (Supp. 79-4). Amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-102 renumbered to R4-26-103; new Section R4-26-102 renumbered from R4-26-101 and amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-103. Repealed**Historical Note**

Former Rule 3; Amended effective November 22, 1977 (Supp. 77-6). Repealed effective September 15, 1978 (Supp. 78-5). New Section R4-26-03 adopted effective July 27, 1979 (Supp. 79-4). Former Section R4-26-103 renumbered to R4-26-104; new Section R4-26-103 renumbered from R4-26-102 and amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Repealed by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-104. Committees

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- A. As permitted under A.R.S. § 32-2064(B), the Board chairperson may appoint Board committees to assist the Board to fulfill the Board's responsibilities.
- B. The Board may appoint consulting committees to conduct investigations and make recommendations to the Board concerning official actions.

Historical Note

Former Rule 4; Former Section R4-26-04 repealed effective November 22, 1977 (Supp. 77-6). New Section R4-26-04 adopted effective September 15, 1978 (Supp. 78-5). Former Section R4-26-04 repealed, new Section R4-26-04 adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981 (Supp. 81-3). Correction, paragraph (2), subparagraph (f) as amended effective June 17, 1981 (Supp. 84-1). Amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-104 renumbered to R4-26-105; new Section R4-26-104 renumbered from R4-26-103 and amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-105. Board Records

- A. A person may view public records in the Board office only during business hours, which are Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding holidays.
- B. All Board records are open to public inspection and copying except confidential records as defined in R4-26-101 or as otherwise provided by law.

Historical Note

Former Rule 5; Former Section R4-26-05 repealed effective November 22, 1977 (Supp. 77-6). New Section R4-26-05 adopted effective September 15, 1978 (Supp. 78-5). Former Section R4-26-05 repealed effective September 15, 1978 (Supp. 78-5). Former Section R4-26-05 repealed, new Section R4-26-05 adopted effective July 27, 1979 (Supp. 79-4). Former Section R4-26-105 renumbered to R4-26-107; new Section R4-26-105 renumbered from R4-26-104 and amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-106. Client or Patient Records

- A. A psychologist shall not condition release of a client or patient record on payment for services by the client, patient, or a third party.
- B. Except as provided in subsection (C), a psychologist shall, with a client's or patient's written consent, provide access to or a copy of the client's or patient's record, including raw test data and other information as provided by law to the client or patient or the client's or patient's health care decision maker unless the release violates copyright or other laws or violates one of the standards incorporated by reference at R4-26-301.
- C. A psychologist may deny a request to provide access to or a copy of a client's or patient's record if the psychologist determines:

1. Access by the client or patient is reasonably likely to endanger the life or physical safety of the client or patient or another person;
 2. The record makes reference to a person other than a health professional and access by the client or patient or the client's or patient's health care decision maker is reasonably likely to cause substantial harm to that other person;
 3. Access by the client's or patient's health care decision maker is reasonably likely to cause substantial harm to the client or patient or another person;
 4. Access by the client or patient or the client's or patient's health care decision maker will reveal information obtained under a promise of confidentiality with someone other than a health professional and access is reasonably likely to reveal the source of the information; or
 5. Access by the client or patient or the client's or patient's health care decision maker may result in misuse or misrepresentation of the information and potentially harm the client or patient.
- D. Without a client's or patient's consent, a psychologist shall release the client's or patient's raw test data only to the extent required by law or under court order compelling production.
 - E. A psychologist shall retain all client or patient records under the psychologist's control, including records of a client or patient who died, for at least six years from the date of the last client or patient activity. If a client or patient is a minor, the psychologist shall retain all client or patient records for at least three years past the client's or patient's 18th birthday or six years from the date of the last client or patient activity, whichever is longer.
 - F. Audio or video tapes created primarily for training or supervisory purposes are exempt from the requirement of subsection (E).
 - G. A psychologist who is notified by the Board or municipal, state, or federal officials of an investigation or pending case shall retain all records relating to that investigation or case until the psychologist receives written notice that the investigation is completed, the case is closed, or the matter has been fully adjudicated.
 - H. The provisions of this Section apply to all psychologists including a psychologist who is on inactive status under A.R.S. § 32-2073 (G).
 - I. A psychologist may retain client or patient records in electronic form. The psychologist shall ensure that client or patient records in electronic form are legible, stored securely, and an electronic backup copy is maintained.

Historical Note

Former Rule 6; Repealed effective November 22, 1977 (Supp. 77-6). New Section adopted effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-107. Change of Name, Mailing, Residential, or E-mail Address, or Telephone Number

- A. The Board shall communicate with a psychologist using the contact information provided to the Board. To ensure timely

CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

communication from the Board, a psychologist shall notify the Board, in writing, within 30 days of any change of name, mailing, residential, or e-mail address (giving both the old and new addresses), or residential, business, or mobile telephone number.

- B. A psychologist who reports a name change shall submit to the Board legal documentation that substantiates the name change.
- C. A psychologist's failure to receive a renewal notice or other mail that the Board sends to the most recent address on file with the Board office does not excuse an untimely license renewal or the omission of any other action required by the psychologist.

Historical Note

Former Rule 7; Repealed effective September 15, 1978 (Supp. 78-5). New Section R4-26-107 renumbered from R4-26-105 and amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-108. Fees and Charges

- A. As specifically authorized by A.R.S. § 32-2067(A), the Board establishes and shall collect the following fees:
 1. Application for an active license to practice psychology: \$350;
 2. Application for a temporary license under A.R.S. § 32-2073(B): \$200
 3. Reapplication for an active license: \$200;
 4. Issuance of an initial active or temporary license (prorated, as applicable): \$500;
 5. Duplicate license: \$25;
 6. Biennial renewal of an active license: \$500;
 7. Biennial renewal of an inactive license: \$85;
 8. Reinstatement of an active or inactive license: \$200; and
 9. Delinquent compliance with continuing education requirements: \$200.
- B. Under the specific authority provided by A.R.S. § 36-3606(A)(3), the Board establishes and shall collect the following fee to register as an out-of-state health care provider of telehealth services: \$600.
- C. As specifically authorized by A.R.S. § 32-2067(A), the Board establishes and shall collect the following charges for the services provided:
 1. Duplicate renewal receipt: \$5;
 2. Copy of statutes and rules: \$5;
 3. Verification of a license: \$2;
 4. Audio recording of a Board or Committee meeting: \$10;
 5. Electronic medium containing the name and address of each licensee: \$.05 per name;
 6. Customized electronic medium containing the name and address of each current licensee: \$.25 per name;
 7. Customized electronic medium containing additional, non-confidential, licensee information: \$.35 per name; and
 8. Copies of Board records, documents, letters, minutes, applications, files, and policy statements: \$.25 per page.
- D. Except as provided by law, including A.R.S. § 41-1077, the fees listed in subsections (A) and (B) are not refundable.

Historical Note

Former Rule 8; Amended as an emergency effective June 15, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-3). Amended effective September 15,

1978 (Supp. 78-5). Repealed effective July 27, 1979 (Supp. 79-4). New Section R4-26-108 adopted effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Former Section R4-26-108 renumbered to R4-26-201 by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). New Section adopted by final rulemaking at 7 A.A.R. 1258, effective February 20, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4). Amended by final exempt rulemaking at 27 A.A.R. 1272, effective September 1, 2021 (Supp. 21-3).

R4-26-109. General Provisions Regarding Telepractice

- A. Except as otherwise provided by law, a licensee who provides psychological service or supervision by telepractice to a client or patient or supervisee located outside Arizona shall comply with not only A.R.S. Title 32, Chapter 19.1, and this Chapter but also the laws and rules of the jurisdiction in which the client or patient or supervisee is located.
- B. Before providing psychological service or supervision by telepractice, a licensee shall establish competence in use of telepractice that conforms to prevailing standards of scientific and professional knowledge.
- C. A licensee who provides psychological service or supervision by telepractice shall maintain competence in use of telepractice through continuing education, consultation, or other procedures designed to address changing technology used in telepractice.
- D. A licensee who provides psychological service or supervision by telepractice shall take all reasonable steps to ensure confidential communications stored electronically cannot be recovered or accessed by an unauthorized person when the licensee disposes of electronic equipment or data.

Historical Note

Former Rule 9; Repealed effective July 27, 1979 (Supp. 79-4). New Section made by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

R4-26-110. Providing Psychological Service by Telepractice

- A. Before providing psychological service by telepractice, a licensee who is in compliance with R4-26-109 shall conduct a risk analysis as clinically indicated and document in the client or patient's record required under R4-26-106 whether use of telepractice:
 1. Is consistent with the client or patient's knowledge and skill regarding use of the technology involved in providing psychological service by telepractice or with ready access to assistance with use of the technology, and
 2. Is in the best interest of the client or patient.
- B. A licensee shall not provide psychological service by telepractice unless both conditions of the risk analysis conducted under subsection (A) are met.
- C. Before providing psychological service by telepractice, a licensee shall:
 1. Obtain the written informed consent of the client or patient, using language that is clear and understandable and consistent with accepted professional and legal requirements. The licensee shall ensure the written informed consent addresses the following and a copy is placed in the client or patient's record required under R4-26-106:
 - 1. Obtain the written informed consent of the client or patient, using language that is clear and understandable and consistent with accepted professional and legal requirements. The licensee shall ensure the written informed consent addresses the following and a copy is placed in the client or patient's record required under R4-26-106:

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- a. The manner in which the licensee will verify the identity of the client or patient before each psychological service if the telepractice does not involve video;
 - b. The manner in which the licensee will ensure the client or patient's electronic communications are received only by the licensee or supervisee;
 - c. Limitations and innovative nature of using technology to provide psychological service;
 - d. Inherent confidentiality risk resulting from use of technology;
 - e. Potential risk of technology failure that disrupts provision of psychological service and how to re-establish communication if disruption occurs;
 - f. When and how the licensee will respond to routine electronic communications;
 - g. The circumstances under which the licensee and client or patient will use an alternative means of communication;
 - h. Who is authorized to access the electronic communication between the licensee and client or patient;
 - i. The manner in which the licensee stores the electronic communication between the licensee and the client or patient; and
 - j. The type of secure electronic technology the licensee will use to communicate with the client or patient;
2. Establish a written agreement with the client or patient that specifies contact information for sources of face-to-face emergency services in the client or patient's geographical area and requires the client or patient to contact a source of face-to-face emergency services when the client or patient experiences a suicidal or homicidal crisis or other emergency. If the licensee has knowledge the client or patient is experiencing a suicidal or homicidal crisis or other emergency, the licensee shall assist the client or patient to contact a source of face-to-face emergency services. The licensee shall place a copy of the written agreement required under this subsection in the client or patient's record required under R4-26-106.
 3. Obtain the name and contact information for an emergency contact;
 4. Obtain information about an alternative means of contacting the client or patient; and
 5. Provide the client or patient with information about an alternative means of contacting the licensee.
- D.** A licensee who provides psychological service by telepractice shall repeat the risk analysis required under subsection (A) as clinically indicated.
- E.** If a licensee does not provide psychological service by telepractice to a client or patient, the provisions of this Section do not apply to electronic communications with the client or patient regarding:
1. Scheduling an appointment, billing, establishing benefits, or determining eligibility for services; and
 2. Checking the welfare of the client or patient in accord with reasonable professional judgment.

Historical Note

Adopted effective November 22, 1977 (Supp. 77-6).
 Repealed and readopted as Section R4-26-57 effective July 27, 1979 (Supp. 79-4). New Section made by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

R4-26-111. Providing Supervision through Telepractice

- A.** As specified under A.R.S. § 32-2071(F) and (G), a licensee who provides in-person individual supervision shall ensure that:
1. No more than 50 percent of the supervision is provided through telepractice; and
 2. Supervision provided through telepractice is conducted using secure, confidential, real-time visual telecommunication technology.
- B.** Before providing supervision by telepractice, a licensee who is in compliance with R4-26-109 shall conduct a risk analysis as clinically indicated and document whether providing supervision by telepractice:
1. Is appropriate for the issue presented by the supervisee's client or patient involved in the supervisory process,
 2. Is consistent with the supervisee's knowledge and skill regarding use of the technology involved in providing supervision by telepractice, and
 3. Is in the best interest of both the supervisee and the supervisee's client or patient involved in the supervisory process.
- C.** A licensee shall not provide supervision by telepractice unless all conditions of the risk analysis conducted under subsection (B) are met.
- D.** Before providing supervision by telepractice, a licensee shall:
1. Enter a written agreement with the supervisee, using language that is clear and understandable and consistent with accepted professional and legal requirements. The licensee shall ensure the written agreement addresses the following and a copy is provided to the supervisee:
 - a. The manner in which the licensee will identify the supervisee before each supervisory session that does not involve video;
 - b. Limitations and innovative nature of using technology to provide supervision;
 - c. Potential risk of technology failure that disrupts provision of supervision and how to re-establish communication if disruption occurs;
 - d. When and how the licensee will respond to routine electronic communications from the supervisee;
 - e. The circumstances under which the licensee and supervisee will use an alternative means of communication; and
 - f. The type of secure electronic technology the licensee will use to communicate with the supervisee;
 2. Obtain information about an alternative means of contacting the supervisee; and
 3. Provide the supervisee with information about an alternative means of contacting the licensee.

Historical Note

New Section made by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

- R4-26-112. Reserved**
- R4-26-113. Reserved**
- R4-26-114. Reserved**
- R4-26-115. Reserved**
- R4-26-116. Reserved**
- R4-26-117. Reserved**
- R4-26-118. Reserved**
- R4-26-119. Reserved**
- R4-26-120. Renumbered**

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	Historical Note Former Section R4-26-120 renumbered to R4-26-201 effective July 27, 1979 (Supp. 79-4).	R4-26-143. Reserved
R4-26-121. Renumbered		R4-26-144. Reserved
	Historical Note Former Section R4-26-120 renumbered to R4-26-202 effective July 27, 1979 (Supp. 79-4).	R4-26-145. Reserved
R4-26-122. Renumbered		R4-26-146. Reserved
	Historical Note Former Section R4-26-120 renumbered to R4-26-203 effective July 27, 1979 (Supp. 79-4).	R4-26-147. Reserved
R4-26-123. Renumbered		R4-26-148. Reserved
	Historical Note Former Section R4-26-120 renumbered to R4-26-204 effective July 27, 1979 (Supp. 79-4).	R4-26-149. Reserved
R4-26-124. Renumbered		R4-26-150. Renumbered
	Historical Note Former Section R4-26-120 renumbered to R4-26-205 effective July 27, 1979 (Supp. 79-4).	Historical Note Former Section R4-26-120 renumbered to R4-26-301 effective July 27, 1979 (Supp. 79-4).
R4-26-125. Renumbered		R4-26-151. Renumbered
	Historical Note Former Section R4-26-120 renumbered to R4-26-206 effective July 27, 1979 (Supp. 79-4).	Historical Note Former Section R4-26-120 renumbered to R4-26-302 effective July 27, 1979 (Supp. 79-4).
R4-26-126. Renumbered		R4-26-152. Renumbered
	Historical Note Former Section R4-26-120 renumbered to R4-26-207 effective July 27, 1979 (Supp. 79-4).	Historical Note Former Section R4-26-120 renumbered to R4-26-303 effective July 27, 1979 (Supp. 79-4).
R4-26-127. Renumbered		R4-26-153. Renumbered
	Historical Note Former Section R4-26-120 renumbered to R4-26-208 effective July 27, 1979 (Supp. 79-4).	Historical Note Former Section R4-26-120 renumbered to R4-26-304 effective July 27, 1979 (Supp. 79-4).
R4-26-128. Renumbered		R4-26-154. Renumbered
	Historical Note Former Section R4-26-120 renumbered to R4-26-209 effective July 27, 1979 (Supp. 79-4).	Historical Note Former Section R4-26-120 renumbered to R4-26-305 effective July 27, 1979 (Supp. 79-4).
R4-26-129. Reserved		R4-26-155. Renumbered
R4-26-130. Reserved		Historical Note Former Section R4-26-120 renumbered to R4-26-306 effective July 27, 1979 (Supp. 79-4).
R4-26-131. Reserved		R4-26-156. Renumbered
R4-26-132. Reserved		Historical Note Former Section R4-26-120 renumbered to R4-26-307 effective July 27, 1979 (Supp. 79-4).
R4-26-133. Reserved		R4-26-157. Renumbered
R4-26-134. Reserved		Historical Note Former Section R4-26-120 renumbered to R4-26-201 effective July 27, 1979 (Supp. 79-4).
R4-26-135. Reserved		ARTICLE 2. LICENSURE
R4-26-136. Reserved		R4-26-201. Application Deadline
R4-26-137. Reserved		A. The Board shall consider a license application at the Board's next scheduled meeting if an administratively complete application packet, including reference forms mailed or e-mailed from the Board office, is received by the Board office at least 18 days before the date of the meeting.
R4-26-138. Reserved		B. The Board shall consider a license application that is received fewer than 18 days before a scheduled meeting at a subsequent meeting.
R4-26-139. Reserved		Historical Note Adopted effective July 27, 1979 (Supp. 79-4). Amended subsection (A) statute reference, effective June 30, 1981
R4-26-140. Reserved		
R4-26-141. Reserved		
R4-26-142. Reserved		

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(Supp. 81-3). Renumbered from R4-26-120 and amended effective July 3, 1991 (Supp. 91-3). Repealed effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). New Section R4-26-201 renumbered from R4-26-108 and amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-202. Doctorate

- A.** The Board shall apply the following criteria to determine whether a doctoral program provided by an institution of higher education met the standards in A.R.S. § 32-2071(A)(2) at the time an applicant began the degree program:
1. The program is identified and labeled as a psychology program if there were institutional catalogues and brochures that specified the intent of the institution of higher education to educate and train psychologists;
 2. The program stands as a recognized, coherent organizational entity if there was an organized sequence of courses comprising a psychology curriculum; and
 3. The program has clearly identified entry and exit criteria within its psychology curriculum if there were specific prerequisites for entrance into the program and delineated requirements for graduation.
- B.** The Board shall verify that an applicant completed the hours in the subject areas described in A.R.S. § 32-2071(A)(4). For this purpose, the applicant shall have the institution of higher education that the applicant attended provide directly to the Board an official transcript of all courses taken and verification of the dissertation or similar project.
1. The Board may require additional documentation from the applicant or from the institution to determine whether the applicant satisfied the requirements of A.R.S. § 32-2071(A)(4).
 2. The Board shall count five quarter hours or six trimester hours as the equivalent of three semester hours, as required under A.R.S. § 32-2071(A)(4). When an academic term is other than a semester, quarter, or trimester, 15 classroom contact hours equals one semester hour.
- C.** To determine whether a comprehensive examination taken by an applicant as part of a doctoral program in psychology satisfies the requirements of A.R.S. § 32-2071(A)(4), the Board shall review documentation provided directly to the Board by the institution of higher education that granted the doctoral degree, that demonstrates how the applicant's comprehensive examination was constructed, lists criteria for passing, and provides the information used to determine that the applicant passed.
- D.** The Board shall not accept as core program hours required under A.R.S. § 32-2071(A)(4) credit:
1. For workshops, practica, undergraduate courses, life experiences, continuing education courses, or experiential or correspondence courses;
 2. Transferred from institutions that are not accredited under A.R.S. § 32-2071(A)(1); or
 3. For seminars, readings courses, or independent study unless the applicant proves that the course was an in-depth study devoted to a particular core program content area by submitting one or more of the following:
 - a. Course description in the official catalogue of the institution of higher education,
 - b. Course syllabus, or

- c. Signed statement from a dean or psychology department head affirming that the course was an in-depth study devoted to a particular core program content area.

- E.** The Board shall count a course or comprehensive examination only once to satisfy a requirement of A.R.S. § 32-2071(A)(4).
- F.** An honorary doctorate degree does not qualify an applicant for licensure as a psychologist.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981 (Supp. 81-3). Renumbered from R4-26-121 and amended effective July 3, 1991 (Supp. 91-3). Amended effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-203. Application for Initial License

- A.** An individual who wishes to be licensed as a psychologist shall submit an application packet to the Board that includes an application form approved by the Board, which is available from the Board office and on its website, with an attestation that is signed and dated by the applicant.
- B.** Additionally, an applicant shall submit:
1. An original, un-retouched, passport-quality photograph of the applicant that is no larger than 1.5 X 2 inches and taken no more than 60 days before the date of application;
 2. The results of a self-query from the National Practitioner Data Bank;
 3. As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law;
 4. The Board's Mandatory Confidential Information form;
 5. Name, position, and address of at least two individuals to serve as references who:
 - a. Are psychologists licensed or certified to practice psychology in a United States or Canadian regulatory jurisdiction and who are not members of the Arizona Board of Psychologist Examiners;
 - b. Are familiar with the applicant's work experience in the field of psychology or in a postdoctoral program within the three years immediately before the date of application. If more than three years have elapsed since the applicant last engaged in professional activities in the field of psychology or in a postdoctoral program, the references may pertain to the most recent three-year period in which the applicant engaged in professional activities in the field of psychology or in a postdoctoral program; and
 - c. Recommend the applicant for licensure;
 6. The fee required under R4-26-108; and
 7. Any other information authorized by statute.
- C.** In addition to the requirements in subsections (A) and (B), an applicant shall arrange to have the following directly submitted to the Board:
1. An official transcript from each university or college from which the applicant attended a graduate program or

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received a graduate degree that contains the date the degree was conferred;

2. An official document from the degree-granting institution indicating that the applicant completed a residency that satisfies the requirements of A.R.S. § 32-2071 (K);
3. For an applicant applying supervised preinternship hours toward licensure, an attestation submitted by the doctoral program training director, faculty supervisor, or other official of the doctoral-granting institution who is knowledgeable of the applicant's preinternship experience verifying that the applicant's preinternship experience meets the requirements of A.R.S. § 32-2071(D).
4. An attestation from the applicant's supervisor, if available, or a psychologist knowledgeable of the applicant's internship training program, verifying that the applicant's internship training program meets the requirements in A.R.S. § 32-2071 (F). If the supervisor or knowledgeable psychologist is not available, the Board shall accept primary source verification received from the Association of State and Provincial Psychology Boards. In this subsection, "not available" means the supervisor or knowledgeable psychologist is deceased or all reasonable efforts to locate the supervisor or knowledgeable psychologist were unsuccessful;
5. For an applicant applying supervised postdoctoral experience toward licensure, an attestation from the applicant's postdoctoral supervisor, if available, or a psychologist knowledgeable of the applicant's postdoctoral experience verifying that the applicant's postdoctoral experience meets the requirements in A.R.S. § 32-2071 (G). If the supervisor or knowledgeable psychologist is not available, the Board shall accept primary source verification received from the Association of State and Provincial Psychology Boards. In this subsection, "not available" means the supervisor or knowledgeable psychologist is deceased or all reasonable efforts to locate the supervisor or knowledgeable psychologist were unsuccessful;
6. Verification of all other psychology licenses or certificates ever held in any regulatory jurisdiction; and
7. An official notification of the applicant's score on the national examination. An applicant who passed the national examination in accordance with the standard established at A.R.S. § 32-2072(A), shall have the examination score sent directly to the Board by the Association of State and Provincial Psychology Boards or by the regulatory jurisdiction in which the applicant originally passed the examination.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective April 25, 1980 (Supp. 80-2). Amended Introductory paragraph statute reference, effective June 30, 1981 (Supp. 81-3). Renumbered from R4-26-122 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-203 repealed, new Section R4-26-203 renumbered from R4-26-204 and amended effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 13 A.A.R. 1493, effective

June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 26 A.A.R. 1010, effective July 4, 2020 (Supp. 20-2).

R4-26-203.01. Application for Licensure by Credential

- A. An applicant for a psychologist license by credential under A.R.S. § 32-2071.01(D) shall submit an application packet to the Board that includes:
 1. An application form approved by the Board, which is available from the Board office and on its website, with an attestation that is signed and dated by the applicant;
 2. Verification sent directly to the Board by the credentialing agency that the applicant:
 - a. Holds a current Certificate of Professional Qualification in Psychology (CPQ) issued by the Association of State and Provincial Psychology Boards;
 - b. Holds a current National Register of Health Service Providers in Psychology (NRHSPP) credential and has practiced psychology independently at the doctoral level for at least five years; or
 - c. Is a diplomate or specialist of the American Board of Professional Psychology (ABPP); and
 3. Verification of all other psychology licenses or certificates ever held in any jurisdiction.
- B. An applicant for a psychologist license by credential based on a National Register of Health Service Providers in Psychology credential shall have notification that the applicant obtained a passing score on the national examination sent directly to the Board by the Association of State and Provincial Psychology Boards or by the regulatory jurisdiction in which the applicant originally passed the examination.
- C. If the Board determines an application for licensure by credential requires clarification, the Board may require an applicant submit or cause the applicant's credentialing agency to submit directly to the Board any documentation including transcripts, course descriptions, catalogues, brochures, supervised experience verifications, examination scores, application for credential, or any other information deemed necessary by the Board.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 26 A.A.R. 1010, effective July 4, 2020 (Supp. 20-2).

R4-26-203.02. Application to Take National Examination before Completing Supervised Professional Experience Required for Licensure

- A. As provided under A.R.S. § 32-2072(C), an individual who has completed the education requirements specified in A.R.S. § 32-2071(A) but has not completed the supervised professional experience requirements specified in A.R.S. § 32-2071(D) may apply to the Board for approval to take the national examination.
- B. To apply for approval under subsection (A), an individual shall submit to the Board the application form and applicable documents required under R4-26-203(A) through (C).
- C. When the Board approves an individual who makes application under subsections (A) and (B), the Board shall administratively close the applicant's application packet.
- D. An individual who is granted approval under subsection (C) to take the national examination may apply for an initial license under R4-26-203 after completing the supervised professional

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experience requirements specified in A.R.S. § 32-2071(D) as follows:

1. Within 36 months after the application was administratively closed under subsection (C), request that the Board re-open the application packet; and
2. Submit the portions of the application packet required under R4-26-203 that were not submitted under subsection (B).

Historical Note

New Section made by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-203.03. Reapplication for License; Applying Anew

A. The following may reapply for a license:

1. An individual who failed the national examination required under A.R.S. § 32-2072 and R4-26-204 no more than three times, and
2. An individual whose application submitted under R4-26-203 or R4-26-203.01 was administratively closed by the Board under R4-26-208(H) less than one year before reapplication.

B. An individual identified in subsection (A) may ask the Board to base a licensing decision, in part, on applicable forms and documents previously submitted.

C. An individual eligible under subsection (B) to reapply for licensure shall:

1. Submit a reapplication form, which is available from the Board office, to the Board;
2. If previously submitted references were submitted more than 12 months before the date of reapplication, provide the names, positions, and addresses of at least two individuals to serve as references who:
 - a. Are psychologists licensed or certified to practice psychology in a United States or Canadian regulatory jurisdiction and are not members of the Arizona Board of Psychologist Examiners;
 - b. Are familiar with the applicant's work experience in the field of psychology or in a postdoctoral program within the three years immediately before the date of reapplication. If more than three years have elapsed since the applicant last engaged in professional activities in the field of psychology or in a postdoctoral program, the references may pertain to the most recent three-year period in which the applicant engaged in professional activities in the field of psychology or in a postdoctoral program; and
 - c. Recommend the applicant for licensure;
3. List all professional employment since the date of the most recent application or reapplication including:
 - a. Beginning and ending dates of employment,
 - b. Number of hours worked per week,
 - c. Name and address of employer,
 - d. Position title,
 - e. Nature of work, and
 - f. Nature of supervision;
4. Submit the results of a self-query from the National Practitioner Data Bank-Healthcare Integrity and Protection Data Bank; and
5. Pay the fee required under R4-26-108(A)(2).

D. The following shall apply anew for a license rather than reapplying:

1. An individual whose application submitted under R4-26-203 or R4-26-203.01 was denied by the Board,
2. An individual who was permitted by the Board to withdraw an application submitted under R4-26-203 or R4-26-203.01 before the Board acted on the application,

3. An individual whose application submitted under R4-26-203 or R4-26-203.01 was administratively closed by the Board under R4-26-208(H) more than one year before another application is submitted,
4. An individual whose license was revoked under A.R.S. § 32-2081(N)(1),
5. An individual whose license expired under A.R.S. § 32-2074,
6. An individual whose license was canceled under A.R.S. 32-2074, and
7. An individual who retired under A.R.S. § 32-2073(G).

Historical Note

New Section made by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

R4-26-204. Examinations

A. General rules.

1. Under A.R.S. § 32-2072(C), an applicant who fails the national examination three times in any regulatory jurisdiction shall, before taking the national examination again, review the applicant's areas of deficiency and implement a program of study or practical experience designed to remedy the deficiencies. This remedial program may consist of any combination of course work, self-study, internship experience, and supervision.
2. An applicant required under subsection (A)(1) to implement a program of study or practical experience may apply anew for licensure. The applicant shall submit a new application packet, as described in R4-26-203, and include information about any actions proposed under subsection (A)(1).
3. Examination deadline. Unless the Board grants an extension, the Board shall administratively close the file of an applicant authorized by the Board to take an examination specified in subsection (B) or (C) who fails to take the examination within one year from the date of the Board's authorization. Upon written request to the Board's Executive Director received by the Board on or before the applicant's examination deadline, the Board shall grant the applicant one extension of up to six months to take the examination. The applicant may request additional extensions for good cause, which includes but is not limited to illness or injury of the licensee or a close family member, death of a close family member, birth or adoption of a child, military service, relocation, natural disaster, financial hardship, or residence in a foreign country for at least 12 months of the license period. The Board shall ensure that an extension is for no more than six months. This Section does not apply to an applicant approved to take the national examination under R4-26-203.02.
4. The Board shall deny a license if an applicant commits any of the following acts with respect to the examination:
 - a. Violates the confidentiality of examination materials;
 - b. Removes any examination materials from the examination room;
 - c. Reproduces any portion of a licensing examination;
 - d. Aids in the reproduction or reconstruction of any portion of a licensing examination;
 - e. Pays or uses another person to take a licensing examination for the applicant or to reconstruct any portion of the licensing examination;

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- f. Obtains examination material, either before, during, or after an examination, for the purpose of instructing or preparing applicants for examinations;
 - g. Sells, distributes, buys, receives, or has possession of any portion of a future, current, or previously administered licensing examination that is not authorized by the Board or its authorized agent for release to the public;
 - h. Communicates with any other examiner during the administration of a licensing examination;
 - i. Copies answers from another examinee or permits the copying of answers by another examinee;
 - j. Possesses during the administration of a licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than material distributed during the examination; or
 - k. Impersonates another examinee.
- B.** National examination. Under A.R.S. § 32-2072, the Board shall require that an applicant take and pass the national examination. An applicant authorized by the Board to take the national examination passes the examination if the applicant's score equals or exceeds the passing score specified in A.R.S. § 32-2072(A). After the Board receives the examination results, the Board shall notify the applicant in writing of the results.
- C.** Additional examination.
1. The Board shall require an applicant to pass the national examination before allowing the applicant to take an additional examination.
 2. Under A.R.S. § 32-2072(B), the Board may administer an additional examination to an applicant to determine the adequacy of the applicant's knowledge and application of Arizona law. The additional examination may also cover the practice of psychology, ethical conduct, and psychological assessment and treatment practices.
 - a. The Board shall review and approve the additional examination before administration.
 - b. The additional examination may be developed and administered by the Board, a committee of the Board, consultants to the Board, or independent contractors.
 - c. Applicants, examiners, and consultants to the Board shall execute a security acknowledgment form and agree to maintain examination security.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended Introductory paragraph statute reference, effective June 30, 1981 (Supp. 81-3). Renumbered from R4-26-123 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-204 renumbered to R4-26-203, new Section R4-26-204 renumbered from R4-26-205 and amended effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-203.04. Temporary License under A.R.S. § 32-2073(B)

- A.** To be eligible to be issued a temporary license under A.R.S. § 32-2073(B), an individual shall:
1. Have completed the educational requirements specified in A.R.S. § 32-2071(A) through (C);
 2. Have completed 1,500 hours of supervised professional experience as described in A.R.S. § 32-2071(F); and
 3. Be participating in a supervised postdoctoral professional experience as described in A.R.S. § 32-2071(G).
- B.** An applicant seeking a temporary license under A.R.S. § 32-2073(B), shall submit an application packet to the Board that includes:
1. The application form required under R4-26-203 and provide all required information except that specified in R4-26-203(C)(3), (5), and (7); and
 2. The written training plan required under A.R.S. § 32-2071(G)(7) from the entity at which the supervised postdoctoral professional experience is occurring that includes at least the following:
 - a. Goal and content of each training experience,
 - b. Expectations regarding the nature, quality, and quantity of work to be done by the supervisee during the supervised postdoctoral professional experience,
 - c. Methods of evaluating the supervisee and the supervised postdoctoral professional experience,
 - d. Total number of hours to be accrued during the supervised postdoctoral professional experience,
 - e. Total number of face-to-face contact hours the supervisee is to have with clients or patients during the supervised postdoctoral professional experience,
 - f. Total number of hours of supervision the supervisee is to receive during the supervised postdoctoral professional experience,
 - g. Qualifications of all individuals who provide supervision during the supervised postdoctoral professional experience including documentation that each is qualified under the standards at A.R.S. § 32-2071(G), and
 - h. Acknowledgment that ethics training is included in the training experience.
- C.** An individual issued a temporary license under A.R.S. § 32-2073(B) shall practice psychology only under supervision. It is unprofessional conduct for the holder of a temporary license issued under A.R.S. § 32-2073(B) to practice psychology without supervision.
- D.** A temporary license issued under A.R.S. § 32-2073(B) is valid for 36 months and is not renewable. If the Board denies an active license under R4-26-203 to the holder of a temporary license issued under A.R.S. § 32-2073(B), the temporary license terminates at the time of license denial.
- E.** The holder of a temporary license issued under A.R.S. § 32-2073(B) shall:
1. Comply fully with all provisions of A.R.S. Title 32, Chapter 19.1, and this Chapter;
 2. Not practice psychology outside the postdoctoral experience specified in the written training plan required under subsection (B)(2) and
 3. Submit to the Board any modification to the written training plan required under subsection (B)(2) within 10 days after the effective date of the modification.

Historical Note

New Section made by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

Appendix A. Repealed

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Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended subsections (A) and (B) statute references, effective June 30, 1981 (Supp. 81-3). Amended effective November 1, 1985 (Supp. 85-6). Renumbered from R4-26-124 and amended effective July 3, 1991 (Supp. 91-3). Renumbered from R4-26-205, Appendix A (Supp. 95-1). Appendix A repealed by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1).

R4-26-205. Renewal of License

- A. Beginning May 1, 2017, a license issued by the Board, whether active or inactive, expires on the last day of a licensee's birth month during the licensee's renewal year.
- B. The Board considers a license renewal application packet timely submitted if delivered or mailed to the Board's office and date stamped or postmarked on or before the last day of a licensee's birth month during the licensee's renewal year.
- C. To renew a license, a licensee shall submit to the Board a renewal application form approved by the Board, which is available from the Board office and on its website, with an attestation that is signed and dated by the licensee.
- D. Additionally, to renew a license, a licensee shall submit to the Board:
 1. The license renewal fee required under R4-26-108;
 2. If the documentation previously submitted under R4-26-203(B)(3) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired;
 3. The following information about the continuing education completed during the previous license period:
 - a. Title of the continuing education;
 - b. Date completed;
 - c. Sponsoring organization, publication, or educational institution;
 - d. Number of hours in the continuing education; and
 - e. Brief description of the continuing education; and
 4. Any other information authorized by statute.
- E. If a completed application is timely submitted under subsections (C) and (D), the licensee may continue to practice psychology under the active license until notified by the Board that the application for renewal has been approved or denied. If the Board denies license renewal, the licensee may continue to practice psychology until the last day for seeking review of the Board's decision or a later date fixed by a reviewing court.
- F. Under A.R.S. § 32-2074 (C), the license of a licensee who fails to submit a renewal application, including the information about continuing education completed, on or before the last day of the licensee's birth month during the licensee's renewal year expires and the licensee shall immediately stop practicing psychology.
- G. A psychologist whose license expires under subsection (F) may have the license reinstated by submitting the following to the Board within two months after the last day of the licensee's birth month during the licensee's renewal year:
 1. The license renewal application required under subsection (C) and the documents required under subsections (D)(2) and (3); and
 2. The license renewal and reinstatement fees required under R4-26-108.
- H. A psychologist whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) may have the license reinstated by:
 1. Complying with subsection (G) within one year after the last day of the licensee's birth month during the licensee's renewal year, and

2. Paying the fee for reinstatement of an active or inactive license as specified in R4-26-108.

- I. A psychologist whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) or (H) may be licensed again only by complying with R4-26-203.
- J. If the Board audits the continuing education records of a licensee and determines that some of the hours do not conform to the standards listed in R4-26-207, the Board shall disallow the non-conforming hours. If the remaining hours are less than the number required, the Board shall deem the licensee as failing to satisfy the continuing education requirements and provide notice of the disallowance to the licensee. The licensee has 90 days from the mailing date of the Board's notification of disallowance to complete the continuing education requirements for the past reporting period and shall provide the Board with an affidavit documenting completion. If the Board does not receive an affidavit within 90 days of the mailing date of notification of disallowance or the Board deems the affidavit insufficient, the Board may take disciplinary action under A.R.S. § 32-2081.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended subsections (A) and (B) statute references, effective June 30, 1981 (Supp. 81-3). Amended effective November 1, 1985 (Supp. 85-6). Renumbered from R4-26-124 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-205 renumbered to R4-26-204; new Section R4-26-205 renumbered from R4-26-206 and amended effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 1010, effective July 4, 2020 (Supp. 20-2).

R4-26-206. Reinstatement of License from Inactive to Active Status; Cancellation of License

- A. Except as provided in subsection (C), when considering reinstatement of a psychologist from inactive to active status, the Board shall presume that the psychologist has maintained and updated the psychologist's professional knowledge and capability to practice as a psychologist if the psychologist presents to the Board documentation of completion of a prorated amount of continuing education, calculated under subsection (B).
- B. A psychologist who is on inactive status for at least two years may reinstate the license to active status by presenting to the Board documentation of completion of at least 40 hours of continuing education that meets the standards in R4-26-207. A psychologist who is on inactive status for less than two years may reinstate the license to active status by presenting to the Board documentation of completion of a prorated amount of continuing education. To calculate the prorated amount of continuing education hours required, the Board shall multiply 1.67 by the number of months from the date of inactive status until the date the application for reinstatement is received by the

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Board. For every six months of inactive status, the Board shall require one hour of continuing education in:

1. Ethics, as specified under R4-26-207(B)(1); and
 2. Domestic violence, intimate partner abuse, child abuse, or abuse of vulnerable adults, as specified under R4-26-207(B)(2).
- C. A psychologist may request that the Board cancel the psychologist's license if the psychologist is not under investigation by any regulatory jurisdiction. Fees paid to obtain a license are not refundable when the license is canceled. If an individual whose request for license cancellation is approved by the Board subsequently decides to practice psychology, the individual shall submit a new application under R4-26-203 and meet the requirements in A.R.S. § 32-2071.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981 (Supp. 81-3). Renumbered from R4-26-125 effective July 3, 1991 (Supp. 91-3). Former Section R4-26-206 renumbered to R4-26-205; new Section R4-26-206 adopted effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 2007, effective July 2, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

R4-26-207. Continuing Education

- A. A licensee shall complete at least 40 hours of continuing education during each license period. Unless specified otherwise, one clock hour of instruction, training, or making a presentation equals one hour of continuing education.
 - B. A licensee shall ensure the continuing education hours obtained include at least four hours in professional ethics.
 - C. During the license period in which an individual is initially licensed, the Board shall pro-rate the number of continuing education hours, including a pro-rated number of hours addressing ethics, that the new licensee must complete during the initial license period. To calculate the number of continuing education hours that a new licensee must obtain, the Board shall divide the 40 hours of continuing education required in a license period by 24 and multiply the quotient by the number of whole months from the date of initial licensure until the end of the license period. During the first license period, for every six months from the month of license issuance to the end of the license period, the Board shall require one hour of continuing education in ethics.
 - D. If the standards in subsection (F) are met, the Board shall accept the following for continuing education hours.
 1. Post-doctoral study sponsored by a university or college that is regionally accredited under A.R.S. § 32-2071(A)(1) and provides a graduate-level degree program;
 2. A course, seminar, workshop, or home study for which a certificate of attendance or completion is provided;
 3. A continuing education program offered by a national, international, regional, or state association, society, board, or continuing education provider;
4. Teaching a graduate-level course in applied psychology at a university or college that is regionally accredited under A.R.S. § 32-2071(A)(1). A licensee who teaches a graduate-level course in applied psychology receives the same number of continuing education hours as number of classroom hours for those who take the graduate-level course;
 5. Organizing and presenting a continuing education activity. A licensee who organizes and presents a continuing education activity receives the same number of continuing education hours as those who attend the continuing education activity;
 6. Serving as a complaint consultant. During a license period, a licensee who serves as a Board complaint consultant to review Board complaints and provides written reports to the Board or provides expert testimony on behalf of the Board may receive continuing education hours equal to the actual number of hours served as a complaint consultant to a maximum of 20 hours. A licensee who is paid by the Board for services rendered shall not receive continuing education credit for the time or services for which payment was made;
 7. The Board shall allow a maximum of 10 continuing education hours for each of the following during a license period:
 - a. Attending a Board meeting or serving as a member of the Board. A licensee receives up to six continuing education hours in professional ethics for attending both morning and afternoon sessions of a Board meeting and three continuing education hours for attending either the morning or afternoon session or at least four hours of a Board meeting. A licensee shall complete documentation provided by the Board at the time the licensee attends a Board meeting;
 - b. Having an authored or co-authored psychology book, psychology book chapter, or article in a peer-reviewed psychology journal published. A licensee who has an authored or co-authored psychology book, psychology book chapter, or article in a peer-reviewed psychology journal published receives 10 continuing education hours in the year of publication;
 - c. Participating in a study group for professional growth and development as a psychologist. A licensee receives one hour of continuing education for each hour of participation to a maximum of 10 continuing education hours for participating in a study group. The Board shall allow continuing education hours for participating in a study group only if the licensee maintains the documentation required under subsection (G)(5);
 - d. Presenting a symposium or paper at a state, regional, national, or international psychology meeting. A licensee who presents a symposium or paper receives the same number of continuing education hours as hours of the session, as published in the agenda of the meeting, at which the symposium or paper is presented to a maximum of 10 continuing education hours;
 - e. Presenting a poster during a poster session at a state, regional, national, or international psychology meeting. A licensee who presents a poster receives an hour of continuing education for each hour the licensee is physically present with the poster during the poster session, as published in the agenda of the

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- meeting, to a maximum of 10 continuing education hours; and
- f. Serving as an elected officer of an international, national, regional, or state psychological association or society. A licensee who serves as an elected officer may receive continuing education hours equal to the actual number of hours served to a maximum of 10 continuing education hours.
- E. The Board shall not allow continuing education credit more than once in a license period for:
1. Teaching the same graduate-level course,
 2. Organizing and presenting a continuing education activity on the same topic or content area, or
 3. Presenting the same symposium or paper at a state, regional, national, or international psychology meeting.
- F. Standards for continuing education. To be acceptable for continuing education credit, an activity identified in subsections (D)(1) through (4) shall:
1. Focus on the practice of psychology, as defined at A.R.S. § 32-2061, for at least 75 percent of the program hours; and
 2. Be taught by an instructor who is readily identifiable as competent in the subject of the continuing education by having an advanced degree, teaching experience, work history, published professional articles, or previously presented continuing education on the same subject.
- G. The Board shall accept the following documents as evidence of completion of continuing education hours:
1. A certificate of attendance or completion;
 2. Statement signed by the provider verifying participation in the activity;
 3. Copy of transcript of course completed under subsection (D)(1);
 4. Documents indicating a licensee's participation as an elected officer or appointed member as specified in subsection (D)(7)(f); or
 5. An attestation signed by all participants of a study group under subsection (D)(7)(c) that includes a description of the activity, subject covered, dates, and number of hours.
- H. A licensee shall maintain the documents listed in subsection (G) through the license period following the license period in which the documents were obtained.
- I. The Board may audit a licensee's compliance with continuing education requirements. The Board may deny renewal or take other disciplinary action against a licensee who fails to obtain or document required continuing education hours. The Board may discipline a licensee who commits fraud, deceit, or misrepresentation regarding continuing education hours.
- J. A licensee who cannot meet the continuing education requirement for good cause may seek an extension of time to complete the continuing education requirement by submitting a written request to the Board with the timely submission of the renewal application required under R4-26-205.
1. Good cause includes but is not limited to illness or injury of the licensee or a close family member, death of a close family member, birth or adoption of a child, military service, relocation, natural disaster, financial hardship, or residence in a foreign country for at least 12 months of the license period.
 2. The Board shall not grant an extension longer than one year.
 3. A licensee who cannot complete the continuing education requirement within the extension may apply to the Board for inactive license status under A.R.S. § 32-2073 (G).
- K. No continuing education hours may be carried over to the next licensing period.
- L. The Board shall not accept for continuing education hours a course, workshop, seminar, or symposium designed to increase income or office efficiency.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective January 23, 1981 (Supp. 81-1). Renumbered from R4-26-126 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-207 repealed; new Section R4-26-207 adopted effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995. Text corrected. (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 1010, effective July 4, 2020 (Supp. 20-2).

R4-26-208. Time Frames for Processing Applications

- A. For the purpose of A.R.S. § 41-1073, the Board establishes the time frames listed in Table 1. An applicant or a person requesting an approval from the Board and the Board's Executive Director may agree in writing to extend the substantive review and overall time frames by no more than 25 percent of the overall time frame.
- B. The administrative completeness review time frame begins when the Board receives an application packet or request for approval. During the administrative completeness review time frame, the Board shall notify the applicant or person requesting approval that the application packet or request for approval is either complete or incomplete. If the application packet or request for approval is incomplete, the Board shall specify in the notice what information is missing.
- C. If an applicant or person requesting approval receives a notice of incompleteness under subsection (B), the applicant or person requesting approval shall submit the missing information to the Board within the time to complete listed in Table 1. Both the administrative completeness review and overall time frames are suspended from the date of the Board's notice under subsection (B) until the Board receives all of the missing information.
- D. Upon receipt of all missing information, the Board shall send a written notice of administrative completeness to the applicant or person requesting approval. The Board shall not send a separate notice of completeness if the Board grants or denies a license or approval within the administrative completeness time frame listed in Table 1.
- E. The substantive review time frame listed in Table 1 begins on the date of the Board's notice of administrative completeness sent under subsection (D).
- F. If the Board determines during the substantive review that additional information is needed, the Board shall send the applicant or person requesting approval a comprehensive written request for additional information.
- G. An applicant or person requesting approval who receives a request under subsection (F) shall submit the additional information to the Board within the time for response listed in Table 1. Both the substantive review and overall time frames

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- are suspended from the date of the Board’s request until the Board receives the additional information.
- H. An applicant or person requesting approval may receive a 30-day extension of the time provided under subsection (C) or (G) by providing written notice to the Board before the time expires. If an applicant or person requesting approval fails to submit to the Board the missing or additional information within the time provided under Table 1 or the time as extended, the Board shall administratively close the applicant’s or person’s file.
 - I. At any time before the overall time frame provided in Table 1 expires, an applicant or person requesting approval may, with approval by the Board, withdraw the application or request.
 - J. Within the overall time frame listed in Table 1, the Board shall:
 1. Grant a license or approval if the Board determines that the applicant or person requesting approval meets all criteria required by statute and this Chapter; or
 2. Deny a license or approval if the Board determines that the applicant or person requesting approval does not meet all criteria required by statute and this Chapter.
 - K. If the Board denies a license or approval, the Board shall send the applicant or person requesting approval a written notice explaining:
 1. The reason for denial, with citations to supporting statutes or rules;
 2. The right to appeal the denial by filing an appeal under A.R.S. Title 41, Chapter 6, Article 10;

3. The time for appealing the denial; and
 4. The right to request an informal settlement conference.
- L. If the last day of a time frame falls on a Saturday, Sunday, or an official state holiday, the time frame ends on the next business day.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective January 23, 1981 (Supp. 81-1). Amended effective July 3, 1984 (Supp. 84-4). Amended effective February 24, 1988 (Supp. 88-1). Renumbered from R4-26-127 effective July 3, 1991 (Supp. 91-3). Former Section R4-26-208 repealed; new Section R4-26-208 amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 737, effective February 19, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

Table 1. Time Frames (in days) for Processing Applications

Type of Application or Request	Statutory or Rule Authority	Administrative Completeness Time Frame	Time to Respond to Notice of Deficiency	Substantive Review Time Frame	Time to Respond to Request for Additional Information	Overall Time Frame
Application for initial license	A.R.S. §§ 32-2071, 32-2071.01, 32-2072, and R4-26-203	30	240	90	365	120
Application for licensure by credential	A.R.S. §§ 32-2071.01, 32-2072; and R4-26-203.01	30	240	90	240	120
Application to Take National Examination before Completing Experience Required for Licensure	A.R.S. § 32-2072(C) and R4-26-203.02	30	240	90	240	120
Reapplication for Licensure	A.R.S. § 32-2067 and R4-26-203.03	30	240	90	240	120
Application for license renewal	A.R.S. § 32-2074; R4-26-205	60	N/A	90	N/A	150
Application for reinstatement of expired license	A.R.S. § 32-2074; R4-26-206	60	N/A	90	N/A	150
Request for extension of time to complete continuing education	A.R.S. § 32-2074; R4-26-207	60	N/A	90	N/A	150
Application for registration as an out-of-state health care provider of telehealth services	A.R.S. § 36-3606; R4-26-108	30	240	90	365	120

Historical Note

Table 1 adopted by final rulemaking at 5 A.A.R. 737, effective February 19, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 26 A.A.R. 1010, effective July 4, 2020 (Supp. 20-2). Amended by final exempt rulemaking at 27 A.A.R. 1272, effective September 1, 2021 (Supp. 21-3).

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R4-26-209. General Supervision

- A.** Under A.R.S. § 32-2071(D), an applicant is required to obtain 3,000 hours of supervised professional experience.
- B.** A supervising psychologist shall not supervise a member of the psychologist's immediate family or the psychologist's employer or business partner.
- C.** Payment between a supervisor and supervisee.
1. A supervising psychologist may pay a monetary stipend or fee to a supervisee if the amount paid by the supervisor is not based on the supervisee's productivity or revenue generated by the supervisee;
 2. A supervising psychologist who accepts a fee for providing the supervisory service in Arizona may be subject to disciplinary action by the Board; and
 3. The Board shall look to the law of the jurisdiction in which the supervision occurred to determine whether to include as part of the 3,000 hours of supervised professional experience required under A.R.S. § 32-2071(D) hours for which an applicant paid the supervisor.
- D.** A psychologist who supervises the professional experience of an unlicensed individual is professionally responsible for all work done by the individual during the supervised experience.
- E.** The Board shall include in the 3,000 hours of supervised professional experience required under A.R.S. § 32-2071(D), hours obtained through a training program only if the training program provides the supervision required under A.R.S. § 32-2071(F)(2).

Historical Note

Adopted effective January 23, 1981 (Supp. 81-1). Renumbered from R4-26-128 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-209 renumbered to R4-26-208; new Section R4-26-209 adopted effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-210. Supervised Professional Experience

- A.** The Board shall use the following criteria to determine whether an applicant's supervised preinternship professional experience complies with A.R.S. § 32-2071 (E):
1. The supervised preinternship professional experience was part of the applicant's doctoral program from an institution of higher education that meets the standards in A.R.S. § 32-2071(A);
 2. The applicant completed appropriate academic preparation before beginning the supervised preinternship professional experience. The Board shall not include any assessment or treatment conducted as part of the required academic preparation in the hours of supervised preinternship professional experience; and
 3. For each supervised preinternship professional experience training site, the applicant has a written training plan with both the training site and the institution of higher education at which the applicant is pursuing a doctoral degree that includes at least the following:
 - a. Training activities included and the amount of time allotted to each activity,
 - b. Goals and objectives of each training activity,
 - c. Methods of evaluating the supervisee and the supervised preinternship professional experiences provided,
 - d. Approval of all individuals providing supervision at sites external to the training site,
 - e. Total number of hours to be accrued during the supervised preinternship professional experience,
 - f. Total number of hours of face-to-face contact hours with clients or patients during the supervised preinternship professional experience,
 - g. Total number of hours of supervision during the supervised preinternship professional experience,
 - h. Qualifications of all individuals who provide supervision during the supervised preinternship professional experience, and
 - i. Acknowledgment that ethics training will be included in all activities.
- B.** The Board shall use the following criteria to determine whether an applicant's internship or training program qualifies as supervised professional experience under A.R.S. § 32-2071 (F):
1. The written statement required under A.R.S. § 32-2071 (F)(9):
 - a. Was established no later than the time the applicant entered the internship or training program; and
 - b. Corresponds to the internship or training program the applicant completed;
 2. A supervisor was directly available to the applicant when decisions were made regarding emergency psychological services provided to a client or patient as required under A.R.S. § 32-2071 (F)(2);
 3. Course work used to satisfy the requirements of A.R.S. § 32-2071(A) or dissertation time is not credited toward the face-to-face, individual supervision time required by A.R.S. § 32-2071 (F)(6);
 4. The two hours a week of other learning activities required under A.R.S. § 32-2071 (F)(6) include one or more of the following
 - a. Case conferences involving a case in which the applicant was actively involved,
 - b. Seminars involving clinical issues,
 - c. Co-therapy with a professional staff person including discussion,
 - d. Group supervision, or
 - e. Additional individual supervision;
 5. The training program had the applicant work with other doctoral level psychology trainees and included in the written statement required under A.R.S. § 32-2071 (F)(9) a description of the program policy specifying the opportunities and resources provided to the applicant for working or interacting with other doctoral level psychology trainees in the same or other sites; and
 6. Time spent fulfilling academic degree requirements, such as course work applied to the doctoral degree, practicum, field laboratory, dissertation, or thesis credit, is not credited toward the 1,500 hours of supervised professional experience hours required by A.R.S. § 32-2071 (F). This subsection does not restrict a student from participating in activities designed to fulfill other doctoral degree requirements. However, the Board shall not credit time spent participating in activities to fulfill academic degree requirements toward the hours required under A.R.S. § 32-2071 (F).
- C.** Under A.R.S. § 32-2071(G)(5), at least 40 percent of an applicant's supervised postdoctoral experience shall involve direct client or patient contact. If an applicant's supervised postdoctoral hours applied toward licensure include less than 40 percent direct contact hours, the applicant shall work additional time to achieve the required percentage of direct contact hours.

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While additional direct contact hours may be obtained to meet this requirement, the Board shall count no more than 1,500 hours of total postdoctoral experience for the purpose of licensure.

Historical Note

Adopted effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

R4-26-211. Foreign Graduates

- A.** Under A.R.S. § 32-2071(B), an applicant for licensure whose application is based on graduation from an institution of higher education located outside the U.S. and its territories shall demonstrate that the applicant's formal education is equivalent to a doctoral degree in psychology from a regionally accredited educational institution as described in A.R.S. § 32-2071(A).
- B.** The Board shall find that the institution of higher education from which an applicant under subsection (A) graduated is equivalent to a regionally accredited education institution only if the institution of higher education is included in one of the following:
1. International Handbook of Universities, published for the International Association of Universities by Stockton Press, 345 Park Avenue South, 10th floor, New York, NY 10010-1708;
 2. Commonwealth Universities Yearbook, published for the Association of Commonwealth Universities by John Foster House, 36 Gordon Square, London, England, WC1H 0PF; or
 3. Another source the Board determines provides reliable information.
- C.** The academic transcript of an applicant under subsection (A) who graduated from an institution included under subsection (B) shall be translated into English and evaluated by a member organization of the National Association of Credential Evaluation Services (NACES). The applicant is responsible for paying all expenses incurred to obtain a translation and review of the academic transcript. An applicant can find information about obtaining a professional credential review at www.naces.org.
- D.** When the credential review required under subsection (C) is completed, the NACES member organization shall submit the review report to the Board. The Board shall review the report and determine whether the applicant's education meets the standard in subsection (A).
- E.** Upon written request, the Board may waive the credential review required under subsection (C) for an applicant who graduated from a doctoral program that is accredited by the accreditation panel of the Canadian Psychological Association.
- F.** After the Board determines that the formal education of an applicant under subsection (A) is equivalent to a doctoral degree in psychology from a regionally accredited educational institution, the applicant shall provide evidence to the Board that the applicant has met all other requirements for licensure.

Historical Note

Adopted effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

ARTICLE 3. REGULATION**R4-26-301. Rules of Professional Conduct**

- A.** The Board incorporates by reference standards 1.01 through 10.10 of the "Ethical Principles of Psychologists and Code of Conduct" adopted by the American Psychological Association, effective June 1, 2003. The incorporated materials do not include any later amendments or editions. A copy of the standards is available from the American Psychological Association Order Department, 750 First Street, NE, Washington, DC 20002-4242, www.apa.org/ethics/code, or the Board office.
- B.** A licensee shall practice psychology in accordance with the standards incorporated under subsection (A).

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981. Amended effective June 30, 1981 (Supp. 81-3). Renumbered from R4-26-150 and amended effective July 3, 1991 (Supp. 91-3). Repealed effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). New Section made by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-302. Informal Interviews

- A.** When a complaint is scheduled for informal interview, the Board shall send written notice of an informal interview to the licensee who is the subject of the complaint, by personal service or certified mail, return receipt requested, at least 20 days before an informal interview.
- B.** The Board shall include the following in the written notice of an informal interview:
1. The time, date, and place of the interview;
 2. An explanation of the informal nature of the proceedings;
 3. The licensee's right to appear at the informal interview with legal counsel licensed in Arizona or without legal counsel;
 4. A statement of the allegations and issues involved;
 5. The licensee's right to a formal hearing instead of the informal interview; and
 6. Notice that the Board may take disciplinary action at the conclusion of the informal interview;
- C.** The procedure used during an informal interview may include the following:
1. Swearing in and taking testimony from the licensee, complainant, and witnesses, if any;
 2. Optional opening and closing remarks by the licensee;
 3. An opportunity for the complainant to address the Board, if requested;
 4. Board questions to the licensee, complainant, and witnesses, if any; and
 5. Deliberation and discussion by the Board.

As of January 10, 2022

32-2061. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a valid and existing license to practice psychology.
2. "Adequate records" means records containing, at a minimum, sufficient information to identify the client or patient, the dates of service, the fee for service, the payments for service, the type of service given and copies of any reports that may have been made.
3. "Board" means the state board of psychologist examiners.
4. "Client" means a person or an entity that receives psychological services. A corporate entity, a governmental entity or any other organization may be a client if there is a professional contract to provide services or benefits primarily to an organization rather than to an individual. If an individual has a legal guardian, the legal guardian is the client for decision-making purposes, except that the individual receiving services is the client or patient for:
 - (a) Issues that directly affect the physical or emotional safety of the individual, such as sexual or other exploitative relationships.
 - (b) Issues that the guardian agrees to specifically reserve to the individual.
5. "Committee on behavior analysts" means the committee established by section 32-2091.15.
6. "Exploit" means actions by a psychologist who takes undue advantage of the professional association with a client or patient, a student or a supervisee for the advantage or profit of the psychologist.
7. "Health care institution" means a facility as defined in section 36-401.
8. "Letter of concern" means an advisory letter to notify a psychologist that while there is insufficient evidence to support disciplinary action the board believes the psychologist should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in action against the psychologist's license.
9. "Patient" means a person who receives psychological services. If an individual has a legal guardian, the legal guardian is the client or patient for decision-making purposes, except that the individual receiving services is the client or patient for:
 - (a) Issues that directly affect the physical or emotional safety of the individual, such as sexual or other exploitative relationships.
 - (b) Issues that the guardian agrees to specifically reserve to the individual.
10. "Practice of psychology" means the psychological assessment, diagnosis, treatment or correction of mental, emotional, behavioral or psychological abilities, illnesses or disorders or purporting or attempting to do this consistent with section 32-2076.
11. "Psychologically incompetent" means a person lacking in sufficient psychological knowledge or skills to a degree likely to endanger the health of clients or patients.
12. "Psychological service" means all actions of the psychologist in the practice of psychology.

13. "Psychologist" means a natural person holding a license to practice psychology pursuant to this chapter.

14. "Supervisee" means any person who functions under the extended authority of the psychologist to provide, or while in training to provide, psychological services.

15. "Telepractice" means providing psychological services through interactive audio, video or electronic communication that occurs between the psychologist and the patient or client, including any electronic communication for diagnostic, treatment or consultation purposes in a secure platform, and that meets the requirements of telehealth pursuant to section 36-3602. Telepractice includes supervision.

16. "Unprofessional conduct" includes the following activities whether occurring in this state or elsewhere:

(a) Obtaining a fee by fraud or misrepresentation.

(b) Betraying professional confidences.

(c) Making or using statements of a character tending to deceive or mislead.

(d) Aiding or abetting a person who is not licensed pursuant to this chapter in representing that person as a psychologist.

(e) Gross negligence in the practice of a psychologist.

(f) Sexual intimacies or sexual intercourse with a current client or patient or a supervisee or with a former client or patient within two years after the cessation or termination of treatment. For the purposes of this subdivision, "sexual intercourse" has the same meaning prescribed in section 13-1401.

(g) Engaging or offering to engage as a psychologist in activities that are not congruent with the psychologist's professional education, training and experience.

(h) Failing or refusing to maintain and retain adequate business, financial or professional records pertaining to the psychological services provided to a client or patient.

(i) Commission of a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(j) Making a fraudulent or untrue statement to the board or its investigators, staff or consultants.

(k) Violating any federal or state laws or rules that relate to the practice of psychology or to obtaining a license to practice psychology.

(l) Practicing psychology while impaired or incapacitated to the extent and in a manner that jeopardizes the welfare of the client or patient or renders the psychological services provided ineffective.

(m) Using fraud, misrepresentation or deception to obtain or attempt to obtain a psychology license or to pass or attempt to pass a psychology licensing examination or in assisting another person to do so.

(n) Unprofessional conduct in another jurisdiction that resulted in censure, probation or a civil penalty or in the denial, suspension, restriction or revocation of a certificate or license to practice as a psychologist.

- (o) Providing services that are unnecessary or unsafe or otherwise engaging in activities as a psychologist that are unprofessional by current standards of practice.
- (p) Falsely or fraudulently claiming to have performed a professional service, charging for a service or representing a service as the licensee's own when the licensee has not rendered the service or assumed supervisory responsibility for the service.
- (q) Representing activities or services as being performed under the licensee's supervision if the psychologist has not assumed responsibility for them and has not exercised control, oversight and review.
- (r) Failing to obtain a client's or patient's informed and written consent to release personal or otherwise confidential information to another party unless the release is otherwise authorized by law.
- (s) Failing to make client or patient records in the psychologist's possession promptly available to another psychologist who is licensed pursuant to this chapter on receipt of proper authorization to do so from the client or patient, a minor client's or patient's parent, the client's or patient's legal guardian or the client's or patient's authorized representative or failing to comply with title 12, chapter 13, article 7.1.
- (t) Failing to take reasonable steps to inform or protect a client's or patient's intended victim and inform the proper law enforcement officials in circumstances in which the psychologist becomes aware during the course of providing or supervising psychological services that a client or patient intends or plans to inflict serious bodily harm on another person.
- (u) Failing to take reasonable steps to protect a client or patient in circumstances in which the psychologist becomes aware during the course of providing or supervising psychological services that a client or patient intends or plans to inflict serious bodily harm on self.
- (v) Abandoning or neglecting a client or patient in need of immediate care without making suitable arrangements for continuation of the care.
- (w) Engaging in direct or indirect personal solicitation of clients or patients through the use of coercion, duress, undue influence, compulsion or intimidation practices.
- (x) Engaging in false, deceptive or misleading advertising.
- (y) Exploiting a client or patient, a student or a supervisee.
- (z) Failing to report information to the board regarding a possible act of unprofessional conduct committed by another psychologist who is licensed pursuant to this chapter unless this reporting violates the psychologist's confidential relationship with the client or patient pursuant to section 32-2085. Any psychologist who reports or provides information to the board in good faith is not subject to an action for civil damages. For the purposes of this subdivision, it is not an act of unprofessional conduct if a licensee addresses an ethical conflict in a manner that is consistent with the ethical standards contained in the document entitled "ethical principles of psychologists and code of conduct" as adopted by the American psychological association and in effect at the time the licensee makes the report.
- (aa) Violating a formal board order, consent agreement, term of probation or stipulated agreement issued under this chapter.
- (bb) Failing to furnish information in a timely manner to the board or its investigators or representatives if requested or subpoenaed by the board as prescribed by this chapter.

(cc) Failing to make available to a client or patient or to the client's or patient's designated representative, on written request, a copy of the client's or patient's record, including raw test data, psychometric testing materials and other information as provided by law.

(dd) Violating an ethical standard adopted by the board.

32-2062. Board; qualifications; appointments; terms; compensation; immunity

A. The state board of psychologist examiners is established consisting of ten members appointed by the governor pursuant to section 38-211.

B. Each member of the board shall be a citizen of the United States and a resident of this state at the time of appointment. Seven members shall be licensed pursuant to this chapter, and three shall be public members who are not eligible for licensure. The board shall have at all times, except for the period when a vacancy exists, at least two members who are licensed as psychologists and who are full-time faculty members from universities in this state with a doctoral program in psychology that meets the requirements of section 32-2071, at least three members who are psychologists in professional practice and at least two members who are behavior analysts in professional practice and who are members of the committee on behavior analysts. The public members shall not have a substantial financial interest in the health care industry and shall not have a household member who is eligible for licensure under this chapter.

C. Each member shall serve for a term of five years beginning and ending on the third Monday in January.

D. A vacancy on the board occurring other than by the expiration of term shall be filled by appointment by the governor for the unexpired term as provided in subsection C of this section. The governor, after a hearing, may remove any member of the board for misconduct, incompetency or neglect of duty.

E. Board members shall receive compensation in the amount of one hundred dollars for each cumulative eight hours of actual service in the business of the board and reimbursement of all expenses pursuant to title 38, chapter 4, article 2.

F. Members of the board and its employees, consultants and test examiners are personally immune from suit with respect to all acts done and actions taken in good faith and in furtherance of the purposes of this chapter.

32-2063. Powers and duties

A. The board shall:

1. Administer and enforce this chapter and board rules.
2. Regulate disciplinary actions, the granting, denial, revocation, renewal and suspension of licenses and the rehabilitation of licensees pursuant to this chapter and board rules.
3. Prescribe the forms, content and manner of application for licensure and renewal of licensure and set deadlines for the receipt of materials required by the board.
4. Keep a record of all licensees, board actions taken on all applicants and licensees and the receipt and disbursement of monies.
5. Adopt an official seal for attesting licenses and other official papers and documents.
6. Investigate charges of violations of this chapter and board rules and orders.

7. Subject to title 41, chapter 4, article 4, employ an executive director who serves at the pleasure of the board.

8. Annually elect from among its membership a chairman, a vice chairman and a secretary, who serve at the pleasure of the board.

9. Adopt rules pursuant to title 41, chapter 6 to carry out this chapter and to define unprofessional conduct.

10. Engage in a full exchange of information with other regulatory boards and psychological associations, national psychology organizations and the Arizona psychological association and its components.

11. By rule, adopt a code of ethics relating to the practice of psychology. The board shall base this code on the code of ethics adopted and published by the American psychological association. The board shall apply the code to all board enforcement policies and disciplinary case evaluations and development of licensing examinations.

12. Adopt rules regarding the use of telepractice.

13. Before the board takes action, receive and consider recommendations from the committee on behavior analysts on all matters relating to licensing and regulating behavior analysts, as well as regulatory changes pertaining to the practice of behavior analysis, except in the case of a summary suspension of a license pursuant to section 32-2091.09, subsection E.

14. Beginning January 1, 2022, require each applicant for an initial or temporary license or a license renewal pursuant to this chapter to have applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1. If an applicant is issued a valid fingerprint clearance card, the applicant shall submit the valid fingerprint clearance card to the board with the completed application. If an applicant applies for a fingerprint clearance card and is denied, the applicant may request that the board consider the application for licensure notwithstanding the absence of a valid fingerprint clearance card. The board, in its discretion, may approve an application for licensure despite the denial of a valid fingerprint clearance card if the board determines that the applicant's criminal history information on which the denial is based does not alone disqualify the applicant from licensure.

B. Subject to title 41, chapter 4, article 4, the board may employ personnel it deems necessary to carry out this chapter. The board, in investigating violations of this chapter, may employ investigators who may be psychologists. The board or its executive director may take and hear evidence, administer oaths and affirmations and compel by subpoena the attendance of witnesses and the production of books, papers, records, documents and other information relating to the investigation or hearing.

C. Subject to section 35-149, the board may accept, expend and account for gifts, grants, devises and other contributions, monies or property from any public or private source, including the federal government. The board shall deposit, pursuant to sections 35-146 and 35-147, monies received pursuant to this subsection in special funds for the purpose specified, and monies in these funds are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

D. Compensation for all personnel shall be determined pursuant to section 38-611.

32-2064. Meetings; committees; quorum

A. The board shall hold regular quarterly meetings at a time and place determined by the chairman. The board shall hold special meetings the chairman determines necessary to carry out the functions of the board.

B. The chairman may establish committees from the board membership necessary to carry out the functions of the board. The board may establish committees of licensed psychologists to act as consultants to the board. Members of consultant committees are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

C. A majority of board members constitutes a quorum and a majority vote of a quorum present is necessary for the board to take any action.

32-2065. Board of psychologist examiners fund; separate behavior analyst account

A. The board of psychologist examiners fund is established.

B. Except as provided in section 32-2081 and section 32-2091.09, subsection I, pursuant to sections 35-146 and 35-147, the board shall deposit ten percent of all monies collected pursuant to this chapter in the state general fund and deposit the remaining ninety percent in the board of psychologist examiners fund.

C. All monies deposited in the board of psychologist examiners fund are subject to section 35-143.01.

D. All monies deposited in the board of psychologist examiners fund pursuant to section 32-2067 and any monies received pursuant to section 32-2063, subsection C for psychologist licensing and regulation must be used only for the licensing and regulation of psychologists pursuant to this article and articles 2 and 3 of this chapter and may not be used for the licensing and regulation of behavior analysts pursuant to article 4 of this chapter.

E. All monies deposited in the board of psychologist examiners fund pursuant to article 4 of this chapter and any monies received pursuant to section 32-2063, subsection C for behavior analyst licensing and regulation must be used only for the licensing and regulation of behavior analysts pursuant to article 4 of this chapter and may not be used for the licensing and regulation of psychologists pursuant to this article and articles 2 and 3 of this chapter.

F. The board shall establish a separate account in the fund for monies transferred to the fund pursuant to article 4 of this chapter and any monies received pursuant to section 32-2063, subsection C for behavior analyst licensing and regulation.

32-2066. Directory; change of address; costs; civil penalty

A. The board shall compile and publish on its web site a directory containing:

1. The names and addresses of the officers and members of the board.
2. The names and addresses of all licensees.
3. The current board rules.
4. A copy of this chapter.
5. Additional information the board deems of interest and importance to licensees.

B. A licensee shall inform the board in writing of the licensee's current residence address, office address and telephone number within thirty days of each change in this information. The board may assess the costs incurred by the board in locating a licensee and may assess a civil penalty of not more than one hundred dollars against a licensee who fails to notify the board within thirty days from the date of any change of information required to be reported under this subsection.

32-2067. [Fees; alternative payment methods](#)

A. The board, by a formal vote at its annual fall meeting, may establish fees and penalties that do not exceed:

1. Four hundred dollars for an application for an active license to practice psychology.
2. Two hundred dollars for an application for a temporary license to practice psychology.
3. Two hundred fifty dollars for reapplication for an active license.
4. Five hundred dollars for issuing an initial license. The board shall prorate this fee pursuant to subsection D of this section.
5. Fifty dollars for a duplicate license.
6. Five hundred dollars for biennial renewal of an active license.
7. Eighty-five dollars for biennial renewal of an inactive license.
8. Three hundred dollars for the reinstatement of an active or inactive license.
9. Three hundred fifty dollars for any additional examination.
10. Two hundred fifty dollars for delinquent compliance with continuing education requirements.
11. Five dollars for the sale of a duplicate renewal receipt.
12. Five dollars for the sale of a copy of the board's statutes and rules.
13. Two dollars for verification of a license.
14. Ten dollars for the sale of each audiotape of board meetings.
15. Five cents per name for the sale of computerized discs that contain the name of each licensee.
16. Twenty-five cents per name for the sale of computerized discs that contain the name and address of each licensee.
17. Thirty-five cents per name for the sale of customized computerized discs that contain additional licensee information that is not required by law to remain confidential.
18. Twenty-five cents per page for copying records, documents, letters, minutes, applications, files and policy statements. This fee includes postage.

B. The board may charge additional fees for services the board deems necessary and appropriate to carry out this chapter. These fees shall not exceed the actual cost of providing the service.

C. The board shall not refund fees except as provided in section 32-2073, subsection G. On special request and for good cause the board may return the license renewal fee.

D. The board shall prorate the fee for issuing an initial license by dividing the biennial renewal fee by twenty-four and multiplying that amount by the number of months that remain until the next biennial renewal date.

E. Subject to the requirements of section 41-2544, the executive director may enter into agreements to allow licensees to pay fees by alternative methods, including credit cards, charge cards, debit cards and electronic funds transfers.

32-2071. Qualifications of applicants; education; training

A. An applicant for licensure shall have a doctoral degree from an institution of higher education in clinical or counseling psychology, school or educational psychology or any other subject area in applied psychology acceptable to the board and shall have completed a doctoral program in psychology from an educational institution that has:

1. Been accredited by one of the following regional accrediting agencies at the time of the applicant's graduation:

- (a) The New England association of schools and colleges.
- (b) The middle states association of colleges and schools.
- (c) The north central association of colleges and schools.
- (d) The northwest association of schools and colleges.
- (e) The southern association of colleges and schools.
- (f) The western association of schools and colleges.

2. A program that is identified and labeled as a psychology program and that stands as a recognized, coherent organizational entity within the institution with clearly identified entry and exit criteria for graduate students in the program.

3. An identifiable psychology faculty in the area of health service delivery and a psychologist responsible for the program.

4. A core program that requires each student to demonstrate competence by passing suitable comprehensive examinations or by successfully completing at least three or more graduate semester hours, five or more quarter hours or six or more trimester hours or by other suitable means in the following content areas:

- (a) Scientific and professional ethics and standards in psychology.
- (b) Research, which may include design, methodology, statistics and psychometrics.
- (c) The biological basis of behavior, which may include physiological psychology, comparative psychology, neuropsychology, sensation and perception and psychopharmacology.
- (d) The cognitive-affective basis of behavior, which may include learning, thinking, motivation and emotion.
- (e) The social basis of behavior, which may include social psychology, group processes, cultural diversity and organizational and systems theory.
- (f) Individual differences, which may include personality theory, human development and abnormal psychology.

(g) Assessment, which includes instruction in interviewing and administering, scoring and interpreting psychological test batteries to diagnose cognitive abilities and personality functioning.

(h) Treatment modalities, which include instruction in the theory and application of a diverse range of psychological interventions to treat mental, emotional, psychological and behavioral disorders.

5. A psychology program that leads to a doctoral degree requiring at least the equivalent of three full-time academic years of graduate study, two years of which are at the institution from which the doctoral degree is granted.

6. A requirement that the student must successfully defend a dissertation, the content of which is primarily psychological, or an equivalent project acceptable to the board.

7. Official transcripts that have been prepared solely by the institution and not by the student and, except for manifest clerical errors or grade changes, have not been altered by the institution after the student's graduation.

8. Given the student credit only for coursework that is listed on its official transcripts and that is obtained only at regionally accredited educational institutions as listed in paragraph 1 of this subsection and does not give credit for continuing education experiences or courses.

B. If the institution is located outside the United States, the applicant shall demonstrate that the program meets the requirements of subsection A, paragraphs 2 through 7 and subsections C through M of this section.

C. The applicant shall complete relevant didactic courses of the program required under subsection A, paragraph 4 of this section before starting the supervised professional experiences as described pursuant to subsection F of this section.

D. Each applicant for licensure shall obtain three thousand hours of supervised professional work experiences. The applicant shall demonstrate clearly how the applicant met this requirement. The applicant shall obtain a minimum of one thousand five hundred hours through an internship as described in subsection F of this section. The applicant shall obtain the remaining one thousand five hundred hours through any combination of the following:

1. Supervised preinternship professional experiences as described in subsection E of this section.
2. Additional internship hours as described in subsection F of this section.
3. Supervised postdoctoral experiences as described in subsection G of this section.

E. If the applicant chooses to include up to one thousand five hundred hours of supervised preinternship professional experience to satisfy a portion of the three thousand hours of supervised professional experience, the following requirements must be met:

1. The applicant's supervised preinternship professional experiences shall reflect a faculty directed, organized, sequential series of supervised experiences of increasing complexity that follows appropriate academic coursework and that prepares the applicant for an internship.
2. The applicant's supervised preinternship professional experiences shall follow appropriate academic preparation. There must be a written training plan between the student and the graduate training program. The training plan for each supervised preinternship professional experience training site must designate an allotment of time for each training activity and must ensure the quality, breadth and depth of training experience by specifying goals and objectives of the supervised preinternship professional

experience, the methods of evaluation of the student and supervisory experiences. If supervision is to be completed by qualified site supervisors at external sites, their approval must be included in the plan.

3. More than one part-time supervised preinternship professional experience placement of appropriate scope and complexity over the course of the graduate training may be combined to satisfy the one thousand five hundred hours of supervised preinternship professional experiences.

4. Every twenty hours of supervised preinternship professional experience must include the following:

(a) At least fifty percent of the supervised preinternship professional experiences must be in psychological service-related activities. Psychological service-related activities may include treatment, assessment, interviews, report writing, case presentations, seminars on applied issues providing cotherapy, group supervision and consultations.

(b) At least twenty-five percent of the supervised preinternship professional experiences must be devoted to face-to-face patient-client contact.

(c) At least one hour per week of regularly scheduled contemporaneous in-person individual supervision per twenty hours of supervised preinternship professional experience that addresses the direct psychological services provided by the student.

(d) At least two hours of regularly scheduled contemporaneous supervision per twenty hours of supervised preinternship professional experience that addresses the direct psychological services provided by the student. At least fifty percent of the supervision during the total supervised preinternship professional experience shall be provided through contemporaneous in-person individual supervision. Not more than fifty percent shall be through in-person group supervision. At least seventy-five percent of the supervision shall be by a psychologist who is licensed or certified to practice psychology at the independent level by a licensing jurisdiction of the United States or Canada and who is designated by the academic program. Not more than twenty-five percent of the supervision shall be by a licensed mental health professional who is licensed or certified by a licensing jurisdiction of the United States or Canada, a psychology intern currently under the supervision of a licensed psychologist or an individual completing a postdoctoral supervised experience currently under the supervision of a licensed psychologist.

5. The applicant must provide to the board the written training plan developed by the applicant's program and documentation of the total hours accrued by the applicant during the supervised preinternship professional experience, including the number of face-to-face patient-client contact hours and the amount of supervision and qualifications of the supervisors for the entire supervised preinternship professional experiences. Documentation must include an acknowledgement that ethics training was included throughout the supervised preinternship professional experience.

6. Supervised professional preinternship experiences must be completed within seventy-two months.

F. The applicant shall have one thousand five hundred hours of supervised professional experience, which shall be either an internship that is approved by the American psychological association committee on accreditation, an internship that is a member of the association of psychology postdoctoral and internship centers or an organized training program that is designed to provide the trainee with a planned, programmed sequence of training experience, the focus and purpose of which are to ensure breadth and quality of training, and that meets the following requirements:

1. The training program has a clearly designated staff psychologist who is responsible for the integrity and quality of the training and who is licensed or certified to practice psychology at the independent level by any licensing jurisdiction of the United States or Canada in which the program exists.

2. The training program provides at least two psychologists on staff as supervisors, at least one of whom is licensed or certified to practice psychology at the independent level by a licensing jurisdiction of the United States or Canada in which the program exists and at least one of whom is directly available to the trainee in case of emergency.
3. Supervision is provided by the person who carries clinical responsibility for the cases being supervised. At least half of the training supervision shall be provided by one or more psychologists.
4. Training includes a range of assessment, consultation and treatment activities conducted directly with clients or patients.
5. A minimum of twenty-five percent of a trainee's supervised professional experience hours is in direct client or patient contact.
6. Training includes regular in-person, individual supervision conducted on a contemporaneous basis, with a minimum of one hour of in-person, individual supervision for each twenty hours of experience and with the specific intent of dealing with psychological services rendered directly by the trainee and at least two additional hours per week in other learning activities. The supervisor shall ensure that the telepractice supervision is conducted using secure, confidential real-time visual telecommunication.
7. The training program includes interaction with other psychology trainees.
8. Trainees have a title that designates their trainee status.
9. The applicant provides from the training organization a written statement that describes the goals and content of the training program and documents that clear expectations existed for the breadth, depth and quality and quantity of a trainee's work at the time of the supervised professional experience.
10. The supervised professional experience is completed within twenty-four consecutive months.

G. Not more than one thousand five hundred hours of supervised professional experience shall be postdoctoral and may start on written certification by the applicant's education program that the applicant has satisfied all requirements for the doctoral degree and on written certification that the applicant has completed an appropriate supervised professional experience as required in subsection F of this section. The applicant may complete more than one thousand five hundred hours of a supervised postdoctoral experience, but not more than one thousand five hundred hours may count towards the requirements of this subsection. The one thousand five hundred hours of supervised professional experience shall meet the following requirements:

1. Supervision is conducted by a psychologist who is licensed or certified to practice psychology at the independent level in any licensing jurisdiction of the United States or Canada in which the supervision occurs or by a psychologist who is on full-time active duty in the United States armed services and who is licensed or certified by a board of psychologist examiners in a United States jurisdiction, who has been licensed or certified for at least two years and who is competent in the areas of professional practice in which the supervisee is receiving supervised professional experience.
2. The supervisor takes full legal responsibility for the welfare of the client or patient as well as the diagnosis, intervention and outcome of the intervention and takes reasonable steps to ensure that clients or patients are informed of the supervisee's training and status and that clients or patients may meet with the supervisor at the client's or patient's request.

3. The supervisor or the appropriate custodian of records is responsible for ensuring that adequate records of client or patient contacts are maintained and that the client or patient is informed that the source of access to this information in the future is the supervisor.

4. The supervisor is fully available for consultation in the event of an emergency and provides emergency consultation coverage for the supervisee.

5. Regular in-person, individual supervision is conducted on a contemporaneous basis, with a minimum of one hour of in-person, individual supervision for each twenty hours of supervised professional experience. At least forty percent of the supervisee's time shall be in direct contact with clients or patients. The supervisor shall ensure that the telepractice supervision is conducted using secure, confidential real-time visual telecommunication technology.

6. The supervised professional experience as described in this subsection is completed within thirty-six consecutive months.

7. The applicant provides from the training organization a written training plan that describes the goals and content of the training experience and documents that clear expectations existed for the breadth, depth and quality and quantity of a trainee's work at the time of the supervised professional experience.

H. In meeting the supervised preinternship professional experience as described in subsection E of this section and the supervised professional experience as described in subsections F and G of this section, an applicant shall not receive credit for more than forty hours of experience per week.

I. An applicant who does not satisfy the supervised professional experience requirements of subsection F of this section may qualify on demonstration of twenty years' licensed or certified practice as a psychologist in a jurisdiction of the United States or Canada.

J. An applicant who does not satisfy the supervised preinternship professional experience requirements of subsection E of this section or the supervised professional experience requirements of subsection G of this section, or a combination of subsections E and G of this section, may qualify on demonstration of ten years' licensed or certified practice as a psychologist in a jurisdiction of the United States or Canada.

K. The applicant shall complete a residency at the institution that awarded the applicant's doctoral degree. The residency shall require the following:

1. The student's active participation and involvement in learning.

2. Direct regular contact with faculty and other matriculated doctoral students.

3. Eighteen semester hours or thirty quarter hours or thirty-six trimester hours completed within a twelve-month consecutive period at the institution or a minimum of three hundred hours of student-faculty contact that involves face-to-face educational meetings conducted by the institution's psychology faculty and fully documented by the institution and the student. These meetings shall include interaction between the student and faculty and the student and other students and shall relate to the program content areas specified in subsection A, paragraph 4 of this section. These meetings shall be in addition to the supervised preinternship professional experience, clerkship or externship supervision hours or dissertation hours. On request by the board, the applicant shall obtain documentation from the institution showing how the applicant's performance was assessed and documented.

L. To determine whether an applicant satisfies the requirements of subsection A of this section relating to subject areas in applied psychology, the board may require the applicant to complete a respecialization program in a program or professional school of psychology that has either an established American

psychological association accredited doctoral program in clinical or counseling psychology or school or educational psychology or an established doctoral program that meets board rules. The applicant must also:

1. Meet all of the requirements of the new respecialization area. The board shall give the applicant credit for coursework that the applicant has previously successfully completed and that meets the requirements of subsection A, paragraph 4 of this section.
2. Complete one thousand five hundred hours of supervised professional experience as prescribed in subsection F of this section.
3. Present a certificate or letter from the department head, training director or dean that verifies that the applicant completed the program and that identifies the specialty area of applied psychology the applicant completed.

M. For the purposes of subsection A, paragraph 4 of this section, "other suitable means" means that an applicant demonstrates competence by being a diplomate of the American board of professional psychology or, if an applicant fails to demonstrate completion of coursework in two content areas prescribed in subsection A, paragraph 4 of this section, the applicant has fulfilled the two deficient requirements by successfully passing a graduate course in each deficient content area as a nonmatriculated student in a doctoral level psychology program at a university that is accredited pursuant to subsection A, paragraph 1 of this section.

32-2071.01. Requirements for licensure; remediation; credentials

A. An applicant for licensure shall demonstrate to the board's satisfaction that the applicant:

1. Has met the education and training qualifications for licensure prescribed in section 32-2071 or subsection D of this section.
2. Has passed any examination or examinations required by section 32-2072.
3. Has a professional record that indicates that the applicant has not committed any act or engaged in any conduct that constitutes grounds for disciplinary action against a licensee pursuant to this chapter.
4. Has not had a license or a certificate to practice psychology refused, revoked, suspended or restricted by a state, territory, district or country for reasons that relate to unprofessional conduct.
5. Has not voluntarily surrendered a license in another regulatory jurisdiction in the United States or Canada while under investigation for conduct that relates to unprofessional conduct.
6. Does not have a complaint, allegation or investigation pending before another regulatory jurisdiction in the United States or Canada that relates to unprofessional conduct.
7. Beginning January 1, 2022, has applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

B. If the board finds that an applicant committed an act or engaged in conduct that would constitute grounds for disciplinary action in this state, or if the board or any jurisdiction has taken disciplinary action against an applicant, the board may issue a license if the board first determines to its satisfaction that the act or conduct has been corrected, monitored or resolved. If the act or conduct has not been resolved before issuing a license, the board must determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

C. An applicant for licensure meets the requirements of section 32-2071, subsection A, paragraphs 1, 2, 3, 4, 5, 6 and 8 if the applicant earned a doctoral degree from a program that was accredited by the American psychological association, office of program consultation and accreditation, or the psychological clinical science accreditation system at the time of graduation.

D. An applicant for licensure who is licensed to practice psychology at the independent level in another licensing jurisdiction of the United States or Canada meets the requirements of subsection A, paragraph 1 of this section if the applicant meets any of the following requirements:

1. Holds a certificate of professional qualification in psychology in good standing issued by the association of state and provincial psychology boards or its successor.
2. Is currently credentialed by the national register of health service providers in psychology or its successor and submits evidence of having practiced psychology independently at the doctoral level for a minimum of five years.
3. Is a diplomate of the American board of professional psychology.

32-2072. Examinations; exemptions

A. An applicant for licensure must pass the examination for professional practice in psychology, which is the national examination established by the association of state and provincial psychology boards. An applicant is considered to have passed the national examination if the applicant's score equals or exceeds either:

1. Seventy per cent on the written examination.
2. A scaled score of five hundred on the computer-based examination.

B. The board may implement an additional examination for all applicants to cover areas of professional ethics and practice consistent with the applicant's education and experience, state law relating to the practice of psychology or other areas the board determines are suitable.

C. An applicant may not take an examination administered for or by the board until the applicant completes the education requirements of this article. The board may approve an applicant who has obtained a doctoral degree in psychology as required under section 32-2071 to take the national examination before completing the experience requirements of this article. Except as provided in subsection D of this section, an applicant may not take an additional board examination until the applicant passes the national examination. An applicant who fails the national examination administered for or by any jurisdiction three times is not eligible to take that examination again until the applicant meets additional requirements prescribed by the board.

D. An applicant is exempt from taking the national examination administered pursuant to this section if the applicant either:

1. Is a diplomate of the American board of professional psychology.
2. Holds a certificate of professional qualification in psychology in good standing issued by the association of state and provincial psychology boards or its successor.

32-2073. Temporary licenses; inactive status; reinstatement to active status

A. If the board requires an additional examination, it may issue a temporary license to a psychologist licensed or certified under the laws of another jurisdiction, if the psychologist applies to the board for licensure and meets the educational, experience and first examination requirements of this article.

B. The board may issue a temporary license to an individual who submits an application for temporary licensure, who is working under supervision for postdoctoral experience and who meets the requirements of section 32-2071, subsections A, B, C and D, as applicable. The individual's postdoctoral experience must meet the requirements of section 32-2071, subsection G. The applicant shall submit the written training plan for the supervised professional experience required in section 32-2071, subsection G, paragraph 7 as part of the application for the temporary license.

C. A temporary license issued pursuant to subsection A of this section is effective from the date that the application is approved until the last day of the month in which the applicant receives the results of the additional examination as provided in section 32-2072.

D. A temporary license issued pursuant to subsection A of this section shall not be extended, renewed, reissued or allowed to continue in effect beyond the period authorized by this section.

E. A temporary license issued pursuant to subsection B of this section is effective for thirty-six months after the date the application is approved and is subject to an initial license fee pursuant to section 32-2067, subsection A, paragraph 4. A temporary license is not subject to renewal.

F. Denial of an application for licensure terminates a temporary license.

G. The board may place on inactive status and waive the license renewal fee requirements for a person who is temporarily or permanently unable to practice as a psychologist due to physical or mental incapacity or disability. An initial request for the waiver of renewal fees shall be accompanied by the renewal fee for an active license, which the board shall return if the waiver is granted. The board shall judge each request for the waiver of renewal fees on its own merits and may seek the verification it deems necessary to substantiate the facts of the situation. A psychologist who is retired is exempt from paying the renewal fee. A psychologist may request voluntary inactive status by submitting to the board an application on a form prescribed by the board and an affirmation that the psychologist shall not practice as a psychologist in this state for the duration of the voluntary inactive status and paying the required fee.

H. A psychologist who is on any form of inactive status shall renew the inactive status every two years by submitting a renewal form provided by the board and paying any applicable fee. A notice to renew is fully effective by mailing the renewal application to the licensee's last known address of record in the board's file. Notice is complete at the time of its deposit in the mail. A psychologist on inactive status due to physical or mental incapacity or disability or retirement shall use the term "inactive" to describe the person's status and shall not practice as a psychologist.

I. A psychologist on inactive status may request reinstatement of the license to active status by applying to the board. The board shall determine whether the person has been or is in violation of any provisions of this chapter and whether the person has maintained and updated the person's professional knowledge and capability to practice as a psychologist. The board may require the person to take or retake the licensure examinations and may require other knowledge or skill training experiences. If approved for active status, the person shall pay a renewal fee that equals the renewal fee for the license to be reinstated.

J. Beginning January 1, 2022, an applicant for a temporary license pursuant to this section shall have applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

[32-2074. Active license; issuance; renewal; expiration; continuing education; cancellation of active license](#)

A. If the applicant satisfies all of the requirements for licensure pursuant to this chapter, the board shall issue an active license and shall prorate the fee for issuing that license for the period remaining until the last day of the birth month of the applicant of the next odd-numbered year or even-numbered year pursuant to subsection B, paragraph 1 or 2 of this section.

B. Except as provided in section 32-4301, a person holding an active or an inactive license shall apply to renew the license on or before the last day of the birth month of the licensee every other year as follows:

1. In each odd-numbered year, if the licensee holds an odd-numbered license.
2. In each even-numbered year, if the licensee holds an even-numbered license.

C. The application shall include any applicable renewal fee. Except as provided in section 32-4301 or 41-1092.11, a license expires if the licensee fails to renew the license on or before the last day of the licensee's birth month of the licensee's renewal year pursuant to subsection B of this section. A licensee may reinstate an expired license by paying a reinstatement fee within two months after the last day of the licensee's birth month in that year. Beginning two months after the last day of the licensee's birth month during the licensee's renewal year until the last day of the licensee's birth month the following year, a licensee may reinstate the license by paying a reinstatement fee and providing proof of competency and qualifications to the board. This proof may include continuing education, an oral examination, a written examination or an interview with the board. A licensee whose license is not reinstated within a year after the last day of the licensee's birth month of the licensee's renewal year may reapply for licensure as prescribed by this chapter. A notice to renew is fully effective by mailing or electronically providing the notice to the licensee's last known address of record or last known email address of record in the board's file. Notice is complete at the time of deposit in the mail or when the email is sent.

D. A person renewing a license shall attach to the completed renewal form a report of disciplinary actions or restrictions placed against the license by another state licensing or disciplinary board or disciplinary actions or sanctions imposed by a state or national psychology ethics committee or health care institution. The report shall include the name and address of the sanctioning agency or health care institution, the nature of the action taken and a general statement of the charges leading to the action.

E. A person who renews an active license to practice psychology in this state shall satisfy a continuing education requirement designed to provide the necessary understanding of current developments, skills, procedures or treatment related to the practice of psychology in the amount and during the period the board prescribes. The board shall prescribe documentation requirements.

F. On request of an active licensee, the board may cancel the license if the licensee is not presently under investigation by the board and the board has not initiated any disciplinary proceeding against the licensee.

G. A person who applies for an initial renewal of a license pursuant to this section on or after January 1, 2022 shall possess or have applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

32-2075. Exemptions from licensure

A. This chapter does not limit the activities, services and use of a title by the following:

1. A school psychologist employed in a common school, high school or charter school setting and certified to use that title by the department of education if the services or activities are a part of the duties of that person's common school, high school or charter school employment.

2. An employee of a government agency in a subdoctorate position who uses the word "assistant" or "associate" after the title and is supervised by a doctorate position employee who is licensed as a psychologist, including a temporary licensee.
 3. A student of psychology pursuing an official course of graduate study at an educational institution accredited as provided in section 32-2071, if after the title the word "trainee", "intern" or "extern" appears and the student uses the title only in conjunction with activities and services that are a part of the supervised program.
 4. A person who resides outside of this state and who is currently licensed or certified to practice psychology at the independent level by a licensing jurisdiction of the United States or Canada if the activities and services conducted in this state are within the psychologist's customary area of practice, do not exceed twenty days per year and are not otherwise in violation of this chapter and the client or patient, public or consumer is informed of the limited nature of these activities and services and that the psychologist is not licensed in this state. A person may exceed the twenty-day limitation requirement of this paragraph to assist in public service that is related to a disaster as acknowledged by the board.
 5. A person in the employ of Arizona state university, northern Arizona university, the university of Arizona or another regionally accredited university in this state or other institutional services if the services are a part of the faculty duties of that person's salaried position, with the exception of faculty providing direct services or faculty providing supervision of students providing direct services, and the person has received a doctoral degree as provided in section 32-2071.
 6. A supervisee who is pursuing a supervised professional experience pursuant to section 32-2071, subsection G if the services or activities are provided under the direct supervision of a licensed psychologist who is licensed or certified for at least two years and who is competent in the areas of professional practice in which the supervisee is receiving supervised professional experience, clients or patients are informed of the training nature of the services provided and the supervisee has a title that designates that person's training status.
- B. This chapter does not prevent a member of other recognized professions that are licensed, certified or regulated under the laws of this state from rendering services within that person's scope of practice and code of ethics if that person does not claim to be a psychologist.

32-2076. Unauthorized practice of medicine

This chapter does not authorize a person to engage in any manner in the practice of medicine pursuant to chapter 13, 17 or 29 of this title, except that a person licensed as provided in this chapter may diagnose, treat and correct human conditions ordinarily within the scope of the practice of a psychologist.

32-2081. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements; civil penalty

- A. The board, on its own motion, may investigate evidence that appears to show that a psychologist is psychologically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of psychology. A health care institution shall, and any other person may, report to the board information that appears to show that a psychologist is psychologically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of psychology.
- B. The board shall not consider a complaint against a psychologist arising out of a judicially ordered evaluation, treatment or psychoeducation of a person charged with violating any provision of title 13, chapter 14 to present a charge of unprofessional conduct unless the court ordering the evaluation has found a substantial basis to refer the complaint for consideration by the board.

C. A claim of unprofessional conduct brought on or after July 3, 2015 against a psychologist arising out of court-ordered services shall be independently reviewed by three members of the board, including a public member. Each of the three board members who are reviewing the claim shall independently provide the board's executive director a recommendation indicating whether the member believes there is merit to open an investigation. If one or more of the board members who are reviewing the claim determine that there is merit to open an investigation as a complaint, an investigation shall be opened and shall follow the complaint process pursuant to this article.

D. The board may not consider a complaint for administrative action if the complaint is filed against a person who is a licensed psychologist and who is a member of the board or a staff member of the board or who is acting as an agent of or consultant to the board if the complaint relates to the person's performance of board duties.

E. The board shall notify the psychologist about whom information has been received as to the content of the information within one hundred twenty days after receiving the information. A person who reports or provides information to the board in good faith is not subject to an action for civil damages. The board, if requested, shall not disclose the name of the person providing information unless this information is essential to proceedings conducted pursuant to this section. The board shall report a health care institution that fails to report as required by this section to the institution's licensing agency.

F. A health care institution shall inform the board if the privileges of a psychologist to practice in that institution are denied, revoked, suspended or limited because of actions by the psychologist that appear to show that that person is psychologically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of psychology, along with a general statement of the reasons that led the health care institution to take this action. A health care institution shall inform the board if a psychologist under investigation resigns the psychologist's privileges or if a psychologist resigns in lieu of disciplinary action by the health care institution. Notification shall include a general statement of the reasons for the resignation.

G. The board may require the licensee to undergo any combination of mental, physical or psychological competence examinations at the licensee's expense and shall conduct investigations necessary to determine the competence and conduct of the licensee.

H. The chairperson of the board shall appoint a complaint screening committee of not less than three members of the board, including a public member. The complaint screening committee is subject to open meeting requirements pursuant to title 38, chapter 3, article 3.1. Except as provided in subsection I of this section, the complaint screening committee shall review all complaints and, based on the information provided pursuant to subsection A or F of this section, may take either of the following actions:

1. Dismiss the complaint if the committee determines that there is no evidence of a violation of law or community standards of practice. Complaints dismissed by the complaint screening committee shall not be disclosed in response to a telephone inquiry or placed on the board's website.

2. Refer the complaint to the full board for further review and action.

I. If the board finds, based on the information it receives under subsection A or F of this section, that the public health, safety or welfare requires emergency action, the board may order a summary suspension of a license pending proceedings for revocation or other action. If the board issues this order, it shall serve the licensee with a written notice of complaint and formal hearing pursuant to title 41, chapter 6, article 10, setting forth the charges made against the licensee and the licensee's right to a formal hearing before the board or an administrative law judge within sixty days.

J. If the board finds that the information provided pursuant to subsection A or F of this section is not of sufficient seriousness to merit direct action against the licensee, it may take any of the following actions:

1. Dismiss if the board believes there is no evidence of a violation of law or community standards of practice.
2. File a letter of concern.
3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

K. If the board believes the information provided pursuant to subsection A or F of this section is or may be true, the board may request an informal interview with the psychologist. If the licensee refuses to be interviewed or if pursuant to an interview the board determines that cause may exist to revoke or suspend the license, the board shall issue a formal complaint and hold a hearing pursuant to title 41, chapter 6, article 10. If as a result of an informal interview or a hearing the board determines that the facts do not warrant revocation or suspension of the license, the board may take any of the following actions:

1. Dismiss if the board believes there is no evidence of a violation of law or community standards of practice.
2. File a letter of concern.
3. Issue a decree of censure.
4. Fix a period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the psychologist. Probation may include temporary suspension for a period of not more than twelve months, restriction of the license or restitution of fees to a client or patient resulting from violations of this chapter. If a licensee fails to comply with a term of probation, the board may file a complaint and notice of hearing pursuant to title 41, chapter 6, article 10 and take further disciplinary action.
5. Enter into an agreement with the licensee to restrict or limit the licensee's practice or activities in order to rehabilitate the psychologist, protect the public and ensure the psychologist's ability to safely engage in the practice of psychology.
6. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

L. If the board finds that the information provided pursuant to subsection A or F of this section warrants suspension or revocation of a license, the board shall hold a hearing pursuant to title 41, chapter 6, article 10. Notice of a complaint and hearing is fully effective by mailing a true copy to the licensee's last known address of record in the board's files. Notice is complete at the time of its deposit in the mail.

M. The board may impose a civil penalty of at least \$300 but not more than \$3,000 for each violation of this chapter or a rule adopted under this chapter. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it collects from civil penalties pursuant to this subsection in the state general fund.

N. If the board determines after a hearing that a licensee has committed an act of unprofessional conduct, is mentally or physically unable to safely engage in the practice of psychology or is psychologically

incompetent, it may do any of the following in any combination and for any period of time it determines necessary:

1. Suspend or revoke the license.
2. Censure the licensee.
3. Place the licensee on probation.

O. A licensee may submit a written response to the board within thirty days after receiving a letter of concern. The response is a public document and shall be placed in the licensee's file.

P. A letter of concern is a public document and may be used in future disciplinary actions against a psychologist. A decree of censure is an official action against the psychologist's license and may include a requirement that the licensee return fees to a client or patient.

Q. Except as provided in section 41-1092.08, subsection H or for a decision made pursuant to subsection C of this section, a person may appeal a final decision made pursuant to this section to the superior court pursuant to title 12, chapter 7, article 6.

R. If during the course of an investigation the board determines that a criminal violation may have occurred involving the delivery of psychological services, it shall inform the appropriate criminal justice agency.

S. If the board finds that it can take rehabilitative or disciplinary action at any time during the investigative or disciplinary process, the board may enter into a consent agreement with the psychologist to limit or restrict the psychologist's practice or to rehabilitate the psychologist in order to protect the public and ensure the psychologist's ability to safely engage in the practice of psychology. The board may also require the psychologist to successfully complete a board-approved rehabilitative, retraining or assessment program at the psychologist's expense.

T. A psychologist who conducts an independent psychological examination pursuant to section 23-1026 is not subject to a complaint of unprofessional conduct unless the complaint alleges unprofessional conduct based on an act other than a disagreement with the findings and opinions expressed by the psychologist as a result of the examination.

32-2082. Right to examine and copy evidence; subpoenas; right to counsel; appeal

A. In connection with an investigation conducted pursuant to this chapter, at all reasonable times the board and its authorized agents may examine and copy documents, reports, records and other physical evidence wherever located relating to the licensee's professional competence, unprofessional conduct or mental or physical ability to safely practice psychology.

B. The board and its authorized agents may issue subpoenas to compel the attendance and testimony of witnesses and the production of documents and other physical evidence as prescribed in subsection A of this section. The board may petition the superior court to enforce a subpoena.

C. Within five days of receiving a subpoena, a person may petition the board to revoke, limit or modify the subpoena. The board shall take this action if it determines that the evidence demanded is not relevant to the investigation. The person may petition the superior court for this relief without first petitioning the board.

D. A person appearing before the board or its authorized agents may be represented by an attorney.

E. Documents associated with an investigation are not open to the public and shall remain confidential. No documents may be released without a court order compelling their production.

F. Nothing in this section or any other provision of law making communications between a psychologist and client or patient privileged applies to an investigation conducted pursuant to this chapter. The board, its employees and its agents shall keep in confidence the names of clients or patients whose records are reviewed during an investigation.

32-2083. Injunction

A. The board may petition the superior court for an order to enjoin the following:

1. A person not licensed pursuant to this chapter from practicing psychology.
2. The activities of a licensee that are an immediate threat to the public.
3. Criminal activities.

B. If the board seeks an injunction to stop the unlicensed practice of psychology, it is sufficient to charge that the respondent on a certain day in a specific county engaged in the practice of psychology without a license and without being exempt from the licensure requirements of this chapter. It is not necessary to show specific damages or injury.

C. The issuance of an injunction does not limit the board's authority to take other action against a licensee pursuant to this chapter.

32-2084. Violations; classification

A. It is a class 2 misdemeanor for a person not licensed pursuant to this chapter to engage in the practice of psychology.

B. It is a class 2 misdemeanor for any person to:

1. Secure a license to practice psychology pursuant to this chapter by fraud or deceit.
2. Impersonate a member of the board in order to issue a license to practice psychology.

C. It is a class 2 misdemeanor for a person not licensed pursuant to this chapter to:

1. Use the designation "psychology", "psychological" or "psychologist".
2. Use any combination of words, initials and symbols that leads the public to believe the person is licensed to practice psychology in this state.

D. It is a class 2 misdemeanor for a person not licensed or not exempt from licensure pursuant to this chapter to use the designation "psychotherapist" or other derivation of the root word "psycho"

32-2085. Confidential communications

A. The confidential relations and communication between a client or patient and a psychologist licensed pursuant to this chapter, including temporary licensees, are placed on the same basis as those provided by law between an attorney and client. Unless the client or patient waives the psychologist-client privilege in writing or in court testimony, a psychologist shall not voluntarily or involuntarily divulge information that is received by reason of the confidential nature of the psychologist's practice. The psychologist shall divulge to the board information it requires in connection with any investigation, public hearing or other

proceeding. The psychologist-client privilege does not extend to cases in which the psychologist has a duty to report information as required by law.

B. The psychologist shall ensure that client or patient records and communications are treated by clerical and paraprofessional staff at the same level of confidentiality and privilege required of the psychologist.

32-2086. Treatment and rehabilitation program

A. The board may establish a confidential program for the treatment and rehabilitation of psychologists who are impaired. The treatment and rehabilitation may include education, intervention, therapeutic treatment and posttreatment monitoring and support. The licensee is responsible for the costs associated with the treatment and rehabilitation, including monitoring.

B. The board may contract with other organizations to operate the program established pursuant to subsection A of this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.
2. Release to the board on demand of all treatment records.
3. Quarterly reports to the board regarding each psychologist's diagnosis, prognosis and recommendations for continuing care, treatment and supervision.
4. Immediate reporting to the board of the name of an impaired psychologist whom the treating organization believes to be a danger to the public or to the psychologist.
5. Reports to the board, as soon as possible, of the name of a psychologist who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.

C. The board may allocate an amount of not more than twenty dollars from each fee it collects from the biennial renewal of active licenses pursuant to section 32-2067 for the operation of the program established by this section.

D. A psychologist who is impaired and who does not agree to enter into a stipulated order with the board shall be placed on probation or shall be subject to other action as provided by law.

E. In order to determine that a psychologist who has been placed on a probation order or who has entered into a stipulation order pursuant to this section is not impaired by alcohol or illegal substances after that order is no longer in effect, the board or its designee may require the psychologist to submit to bodily fluid examinations and other examinations known to detect the presence of alcohol or illegal substances at any time within the five consecutive years following termination of the probationary or stipulated order.

F. A psychologist who is impaired by alcohol or illegal substances and who was under a board stipulation or probationary order that is no longer in effect must ask the board to place the psychologist's license on inactive status with cause. If the psychologist fails to do this, the board shall summarily suspend the license pursuant to section 32-2081. In order to reactivate the license the psychologist must successfully complete a board approved long-term care residential treatment program, an inpatient hospital treatment program or an intensive outpatient treatment program and shall meet the requirements of section 32-2074. After the psychologist completes treatment the board shall determine if it should reactivate the license without restrictions or refer the matter to a formal hearing for the purpose of suspending or revoking the license or to place the psychologist on probation with restrictions necessary to ensure the public's safety.

G. The board may revoke the license of a psychologist if that psychologist is impaired by alcohol or illegal substances and was previously placed on probation pursuant to subsection F of this section. If the licensee is no longer on probation, the board may accept the surrender of the license if the psychologist admits in writing to being impaired by alcohol or illegal substances.

H. An evaluator, treatment provider, teacher, supervisor or volunteer in the board's substance abuse treatment and rehabilitation program who acts in good faith within the scope of that program is not subject to civil liability, including malpractice liability, for the actions of a psychologist who is attending the program pursuant to board action.

32-2087. [Psychology interjurisdictional compact](#)

ARTICLE I

PURPOSE

Whereas, states license psychologists in order to protect the public through verification of education, training and experience and to ensure accountability for professional practice; and

Whereas, this compact is intended to regulate the day-to-day practice of telepsychology, which is the provision of psychological services using telecommunication technologies, by psychologists across state boundaries in the performance of their psychological practice as assigned by an appropriate authority; and

Whereas, this compact is intended to regulate the temporary in-person, face-to-face practice of psychology by psychologists across state boundaries for thirty days within a calendar year in the performance of their psychological practice as assigned by an appropriate authority;

Whereas, this compact is intended to authorize state psychology regulatory authorities to afford legal recognition, in a manner consistent with the terms of the compact, to psychologists licensed in another state;

Whereas, this compact recognizes that states have a vested interest in protecting the public's health and safety through their licensing and regulation of psychologists and that such state regulation will best protect public health and safety;

Whereas, this compact does not apply when a psychologist is licensed in both the home and receiving states; and

Whereas, this compact does not apply to permanent in-person, face-to-face practice, but it does allow for authorization of temporary psychological practice.

Consistent with these principles, this compact is designed to achieve the following purposes and objectives:

1. Increase public access to professional psychological services by allowing for telepsychological practice across state lines as well as temporary in-person, face-to-face services into a state where the psychologist is not licensed to practice psychology;
2. Enhance the states' ability to protect the public's health and safety, especially client/patient safety;
3. Encourage the cooperation of compact states in the areas of psychology licensure and regulation;
4. Facilitate the exchange of information between compact states regarding psychologist licensure, adverse actions and disciplinary history;

5. Promote compliance with the laws governing psychological practice in each compact state; and
6. Invest all compact states with the authority to hold licensed psychologists accountable through the mutual recognition of compact state licenses.

ARTICLE II

DEFINITIONS

As used in this compact:

- A. "Adverse action" means any action that is taken by a state psychology regulatory authority that finds a violation of a statute or regulation, that is identified by the state psychology regulatory authority as discipline and that is a matter of public record.
- B. "Association of state and provincial psychology boards" or "ASPPB" means the recognized membership organization composed of state and provincial psychology regulatory authorities responsible for the licensure and registration of psychologists throughout the United States and Canada.
- C. "Authority to practice interjurisdictional telepsychology" means a licensed psychologist's authority to practice telepsychology, within the limits authorized under this compact, in another compact state.
- D. "Bylaws" means those bylaws established by the psychology interjurisdictional compact commission pursuant to article X of this compact for its governance or for directing and controlling its actions and conduct.
- E. "Client/patient" means the recipient of psychological services, whether psychological services are delivered in the context of health care, corporate, supervision or consulting services.
- F. "Commissioner" means the voting representative appointed by each state psychology regulatory authority pursuant to article X of this compact.
- G. "Compact state" means a state, the District of Columbia, or a United States territory that has enacted this compact legislation and that has not withdrawn pursuant to article XIII, subsection C or been terminated pursuant to article XII, subsection B.
- H. "Confidentiality" means the principle that data or information is not made available or disclosed to unauthorized persons or processes.
- I. "Coordinated licensure information system" or "coordinated database" means an integrated process for collecting, storing and sharing information on psychologists' licensure and enforcement activities related to psychology licensure laws that is administered by the recognized membership organization composed of state and provincial psychology regulatory authorities.
- J. "Day" means any part of a day in which psychological work is performed.
- K. "Distant state" means the compact state where a psychologist is physically present, not through the use of telecommunications technologies, to provide temporary in-person, face-to-face psychological services.
- L. "E.Passport" means a certificate issued by the association of state and provincial psychology boards that promotes the standardization in the criteria of interjurisdictional telepsychology practice and facilitates the process for licensed psychologists to provide telepsychological services across state lines.

M. "Executive board" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.

N. "Home state" means a compact state where a psychologist is licensed to practice psychology. If the psychologist is licensed in more than one compact state and is practicing under the authorization to practice interjurisdictional telepsychology, the home state is the compact state where the psychologist is physically present when the telepsychological services are delivered. If the psychologist is licensed in more than one compact state and is practicing under the temporary authorization to practice, the home state is any compact state where the psychologist is licensed.

O. "Identity history summary" means a summary of information retained by the federal bureau of investigation or another designee with similar authority in connection with arrests and in some instances, federal employment, naturalization or military service.

P. "In-person, face-to-face" means interactions in which the psychologist and the client/patient are in the same physical space and does not include interactions that may occur through the use of telecommunication technologies.

Q. "Interjurisdictional practice certificate" or "IPC" means a certificate issued by the association of state and provincial psychology boards that grants temporary authority to practice based on notification to the state psychology regulatory authority of intention to practice temporarily, and verification of one's qualifications for such practice.

R. "License" means authorization by a state psychology regulatory authority to engage in the independent practice of psychology, which would be unlawful without the authorization.

S. "Non-compact state" means any state that is not at the time a compact state.

T. "Psychologist" means an individual who is licensed for the independent practice of psychology.

U. "Psychology interjurisdictional compact commission" or "commission" means the national administration of which all compact states are members.

V. "Receiving state" means a compact state where the client/patient is physically located when the telepsychological services are delivered.

W. "Rule" means a written statement by the psychology interjurisdictional compact commission promulgated pursuant to article XI of this compact that is of general applicability, that implements, interprets or prescribes a policy or provision of the compact or an organizational, procedural or practice requirement of the commission and that has the force and effect of statutory law in a compact state, and includes the amendment, repeal or suspension of an existing rule.

X. "Significant investigatory information" means either of the following:

1. Investigative information that a state psychology regulatory authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proven true, would indicate more than a violation of state statute or ethics code that would be considered more substantial than a minor infraction.

2. Investigative information that indicates that the psychologist represents an immediate threat to public health and safety regardless of whether the psychologist has been notified or had an opportunity to respond.

Y. "State" means a state, commonwealth, territory or possession of the United States or the District of Columbia.

Z. "State psychology regulatory authority" means the board, office or other agency with the legislative mandate to license and regulate the practice of psychology.

AA. "Telepsychology" means the provision of psychological services using telecommunication technologies.

BB. "Temporary authorization to practice" means a licensed psychologist's authority to conduct temporary in-person, face-to-face practice, within the limits authorized under this compact, in another compact state.

CC. "Temporary in-person, face-to-face practice" means that a psychologist is physically present, not through the use of telecommunications technologies, in the distant state to provide for the practice of psychology for thirty days within a calendar year, based on notification to the distant state.

ARTICLE III

HOME STATE LICENSURE

A. The home state shall be a compact state where a psychologist is licensed to practice psychology.

B. A psychologist may hold one or more compact state licenses at a time. If the psychologist is licensed in more than one compact state, the home state is the compact state where the psychologist is physically present when the services are delivered as authorized by the authority to practice interjurisdictional telepsychology under the terms of this compact.

C. Any compact state may require a psychologist who has not been previously licensed in a compact state to obtain and retain a license to be authorized to practice in the compact state under circumstances not authorized by the authority to practice interjurisdictional telepsychology under the terms of this compact.

D. Any compact state may require a psychologist to obtain and retain a license to be authorized to practice in a compact state under circumstances not authorized by temporary authorization to practice under the terms of this compact.

E. A home state's license authorizes a psychologist to practice in a receiving state under the authority to practice interjurisdictional telepsychology only if the compact state:

1. Currently requires the psychologist to hold an active E.Passport;
2. Has a mechanism in place for receiving and investigating complaints about licensed individuals;
3. Notifies the commission, in compliance with the terms in this compact, of any adverse action or significant investigatory information regarding a licensed individual;
4. Requires an identity history summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the federal bureau of investigation or another designee with similar authority, no later than ten years after activation of the compact; and
5. Complies with the bylaws and rules of the commission.

F. A home state's license grants temporary authorization to practice to a psychologist in a distant state only if the compact state:

1. Currently requires the psychologist to hold an active IPC;
2. Has a mechanism in place for receiving and investigating complaints about licensed individuals;
3. Notifies the commission, in compliance with the terms in this compact, of any adverse action or significant investigatory information regarding a licensed individual;
4. Requires an identity history summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the federal bureau of investigation or another designee with similar authority, no later than ten years after activation of the compact; and
5. Complies with the bylaws and rules of the commission.

ARTICLE IV

COMPACT PRIVILEGE TO PRACTICE TELEPSYCHOLOGY

A. Compact states shall recognize the right of a psychologist who is licensed in a compact state in conformance with article III of this compact to practice telepsychology in other compact states, or receiving states, in which the psychologist is not licensed, under the authority to practice interjurisdictional telepsychology as provided in this compact.

B. To exercise the authority to practice interjurisdictional telepsychology under the terms and provisions of this compact, a psychologist licensed to practice in a compact state must meet all of the following:

1. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:

(a) Regionally accredited by an accrediting body recognized by the United States department of education to grant graduate degrees or authorized by provincial statute or royal charter to grant doctoral degrees; or

(b) A foreign college or university deemed to be equivalent to subdivision (a) of this paragraph by a foreign credential evaluation service that is a member of the national association of credential evaluation services or by a recognized foreign credential evaluation service; and

2. Hold a graduate degree in psychology that meets the following criteria:

(a) The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;

(b) The psychology program must stand as a recognizable, coherent, organizational entity within the institution;

(c) There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

(d) The program must consist of an integrated, organized sequence of study;

(e) There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

(f) The designated director of the program must be a psychologist and a member of the core faculty;

- (g) The program must have an identifiable body of students who are matriculated in that program for a degree;
 - (h) The program must include supervised practicum, internship or field training appropriate to the practice of psychology;
 - (i) The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degrees and a minimum of one academic year of full-time graduate study for master's degrees;
 - (j) The program includes an acceptable residency as defined by the rules of the commission.
3. Possess a current, full and unrestricted license to practice psychology in a home state that is a compact state;
 4. Have no history of adverse action that violates the rules of the commission;
 5. Have no criminal record history reported on an identity history summary that violates the rules of the commission;
 6. Possess a current, active E.Passport;
 7. Provide attestations in regard to areas of intended practice, conformity with standards of practice, competence in telepsychology technology, criminal background and knowledge and adherence to legal requirements in the home and receiving states, and provide a release of information to allow for primary source verification in a manner specified by the commission; and
 8. Meet other criteria as defined by the rules of the commission.
- C. The home state maintains authority over the license of the psychologist practicing into a receiving state under the authority to practice telepsychology.
- D. A psychologist practicing into a receiving state under the authority to practice interjurisdictional telepsychology will be subject to the receiving state's scope of practice. A receiving state may, in accordance with that state's due process law, limit or revoke a psychologist's authority to practice interjurisdictional telepsychology in the receiving state and may take any other necessary actions under the receiving state's applicable law to protect the health and safety of the receiving state's citizens. If a receiving state takes action, the state shall promptly notify the home state and the commission.
- E. If a psychologist's license in any home state or another compact state, or any authority to practice interjurisdictional telepsychology in any receiving state, is restricted, suspended or otherwise limited, the E.Passport shall be revoked and the psychologist is not eligible to practice telepsychology in a compact state under the authority to practice interjurisdictional telepsychology.

ARTICLE V

COMPACT TEMPORARY AUTHORIZATION TO PRACTICE

- A. Compact states shall also recognize the right of a psychologist who is licensed in a compact state in conformance with article III of this compact to practice temporarily in other compact states, or distant states, in which the psychologist is not licensed, as provided in this compact.
- B. To exercise the temporary authorization to practice under the terms and provisions of this compact, a psychologist licensed to practice in a compact state must meet all of the following:

1. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:

(a) Regionally accredited by an accrediting body recognized by the United States department of education to grant graduate degrees, or authorized by provincial statute or royal charter to grant doctoral degrees; or

(b) A foreign college or university deemed to be equivalent to subdivision (a) of this paragraph by a foreign credential evaluation service that is a member of the national association of credential evaluation services or by a recognized foreign credential evaluation service; and

2. Hold a graduate degree in psychology that meets the following criteria:

(a) The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;

(b) The psychology program must stand as a recognizable, coherent, organizational entity within the institution;

(c) There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

(d) The program must consist of an integrated, organized sequence of study;

(e) There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

(f) The designated director of the program must be a psychologist and a member of the core faculty;

(g) The program must have an identifiable body of students who are matriculated in that program for a degree;

(h) The program must include supervised practicum, internship or field training appropriate to the practice of psychology;

(i) The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degrees and a minimum of one academic year of full-time graduate study for master's degrees;

(j) The program includes an acceptable residency as defined by the rules of the commission.

3. Possess a current, full and unrestricted license to practice psychology in a home state that is a compact state;

4. Have no history of adverse action that violates the rules of the commission;

5. Have no criminal record history that violates the rules of the commission;

6. Possess a current, active IPC;

7. Provide attestations in regard to areas of intended practice and work experience and provide a release of information to allow for primary source verification in a manner specified by the Commission; and

8. Meet other criteria as defined by the rules of the commission.

C. A psychologist practicing into a distant state under the temporary authorization to practice shall practice within the scope of practice authorized by the distant state.

D. A psychologist practicing into a distant state under the temporary authorization to practice will be subject to the distant state's authority and law. A distant state may, in accordance with that state's due process law, limit or revoke a psychologist's temporary authorization to practice in the distant state and may take any other necessary actions under the distant state's applicable law to protect the health and safety of the distant state's citizens. If a distant state takes action, the state shall promptly notify the home state and the commission.

E. If a psychologist's license in any home state or another compact state, or any temporary authorization to practice in any distant state, is restricted, suspended or otherwise limited, the IPC shall be revoked and the psychologist is not eligible to practice in a compact state under the temporary authorization to practice.

ARTICLE VI

CONDITIONS OF TELEPSYCHOLOGY PRACTICE

IN A RECEIVING STATE

A psychologist may practice in a receiving state under the authority to practice interjurisdictional telepsychology only in the performance of the scope of practice for psychology as assigned by an appropriate state psychology regulatory authority, as defined in the rules of the commission, and under the following circumstances:

1. The psychologist initiates a client/patient contact in a home state via telecommunications technologies with a client/patient in a receiving state;
2. Other conditions regarding telepsychology as determined by rules promulgated by the commission.

ARTICLE VII

ADVERSE ACTIONS

A. A home state shall have the power to impose adverse action against a psychologist's license issued by the home state. A distant state shall have the power to take adverse action on a psychologist's temporary authorization to practice within that distant state.

B. A receiving state may take adverse action on a psychologist's authority to practice interjurisdictional telepsychology within that receiving state. A home state may take adverse action against a psychologist based on an adverse action taken by a distant state regarding temporary in-person, face-to-face practice.

C. If a home state takes adverse action against a psychologist's license, that psychologist's authority to practice interjurisdictional telepsychology is terminated and the E.Passport is revoked. Furthermore, that psychologist's temporary authorization to practice is terminated and the IPC is revoked as follows:

1. All home state disciplinary orders that impose adverse action shall be reported to the commission in accordance with the rules promulgated by the commission. A compact state shall report adverse actions in accordance with the rules of the commission.

2. In the event discipline is reported on a psychologist, the psychologist will not be eligible for telepsychology or temporary in-person, face-to-face practice in accordance with the rules of the commission.

3. Other actions may be imposed as determined by the rules of the commission.

D. A home state's psychology regulatory authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a licensee that occurred in a receiving state as it would if such conduct had occurred by a licensee within the home state. In such cases, the home state's law shall control in determining any adverse action against a psychologist's license.

E. A distant state's psychology regulatory authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a psychologist practicing under temporary authorization practice which occurred in that distant state as it would if such conduct had occurred by a licensee within the home state. In such cases, the distant state's law shall control in determining any adverse action against a psychologist's temporary authorization to practice.

F. Nothing in this compact shall override a compact state's decision that a psychologist's participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the compact state's law. Compact states must require psychologists who enter any alternative programs to not provide telepsychology services under the authority to practice interjurisdictional telepsychology or provide temporary psychological services under the temporary authorization to practice in any other compact state during the term of the alternative program.

G. No other judicial or administrative remedies shall be available to a psychologist in the event a compact state imposes an adverse action pursuant to subsection C of this article.

ARTICLE VIII

ADDITIONAL AUTHORITIES INVESTED IN A COMPACT

STATE'S PSYCHOLOGY REGULATORY AUTHORITY

A. In addition to any other powers granted under state law, a compact state's psychology regulatory authority shall have the authority under this compact to:

1. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a compact state's psychology regulatory authority for the attendance and testimony of witnesses or the production of evidence from another compact state shall be enforced in the latter state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing state psychology regulatory authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state where the witnesses or evidence are located; and

2. Issue cease and desist or injunctive relief orders to revoke a psychologist's authority to practice interjurisdictional telepsychology and/or temporary authorization to practice.

B. During the course of any investigation, a psychologist may not change the psychologist's home state licensure. A home state psychology regulatory authority is authorized to complete any pending investigations of a psychologist and to take any actions appropriate under its law. The home state psychology regulatory authority shall promptly report the conclusions of such investigations to the commission. Once an investigation has been completed, and pending the outcome of said investigation, the psychologist may change the psychologist's home state licensure. The commission shall promptly notify the new home state of any such decisions as provided in the rules of the commission. All information provided to the commission or distributed by compact states pursuant to the psychologist shall be confidential, filed under seal and used for investigatory or disciplinary matters. The commission may create additional rules for mandated or discretionary sharing of information by compact states.

ARTICLE IX

COORDINATED LICENSURE INFORMATION SYSTEM

A. The commission shall provide for the development and maintenance of a coordinated database and reporting system containing licensure and disciplinary action information on all psychologists or individuals to whom this compact is applicable in all compact states as defined by the rules of the commission.

B. Notwithstanding any other provision of state law to the contrary, a compact state shall submit a uniform data set to the coordinated database on all licensees as required by the rules of the commission, including:

1. Identifying information;
2. Licensure data;
3. Significant investigatory information;
4. Adverse actions against a psychologist's license;
5. An indicator that a psychologist's authority to practice interjurisdictional telepsychology and/or temporary authorization to practice is revoked;
6. Nonconfidential information related to alternative program participation information;
7. Any denial of application for licensure and the reasons for such denial; and
8. Other information that may facilitate the administration of this compact, as determined by the rules of the commission.

C. The coordinated database administrator shall promptly notify all compact states of any adverse action taken against, or significant investigative information on, any licensee in a compact state.

D. Compact States reporting information to the coordinated database may designate information that may not be shared with the public without the express permission of the compact state reporting the information.

E. Any information submitted to the coordinated database that is subsequently required to be expunged by the law of the compact state reporting the information shall be removed from the coordinated database.

ARTICLE X

ESTABLISHMENT OF THE PSYCHOLOGY INTERJURISDICTIONAL

COMPACT COMMISSION

A. The compact states hereby create and establish a joint public agency known as the psychology interjurisdictional compact commission as follows:

1. The commission is a body politic and an instrumentality of the compact states.
2. Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located.

The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting and Meetings are as follows:

1. The commission shall consist of one voting representative appointed by each compact state who shall serve as that state's commissioner. The state psychology regulatory authority shall appoint its delegate. This delegate shall be empowered to act on behalf of the compact state. This delegate shall be limited to:

(a) The executive director or executive secretary or a similar executive;

(b) A current member of the state psychology regulatory authority of a compact state; or

(c) A designee empowered with the appropriate delegate authority to act on behalf of the compact state.

2. Any commissioner may be removed or suspended from office as provided by the law of the state from which the commissioner is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compact state in which the vacancy exists.

3. Each commissioner shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. A commissioner shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for commissioners' participation in meetings by telephone or other means of communication.

4. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

5. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in article XI of this compact.

6. The commission may convene in a closed, nonpublic meeting if the commission must discuss:

(a) Noncompliance of a compact state with its obligations under the compact;

(b) The employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

(c) Current, threatened or reasonably anticipated litigation against the commission;

(d) The negotiation of contracts for the purchase or sale of goods, services or real estate;

(e) An accusation against any person of a crime or formally censuring any person;

(f) The disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(g) The disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(h) The disclosure of investigatory records compiled for law enforcement purposes;

(i) The disclosure of information related to any investigatory reports prepared by or on behalf of or for use of the commission or another committee charged with responsibility for investigation or determination of compliance issues pursuant to the compact; or

(j) Matters specifically exempted from disclosure by federal and state statute.

7. If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, of any person participating in the meeting, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release only by a majority vote of the commission or order of a court of competent jurisdiction.

C. The commission shall, by a majority vote of the commissioners, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this compact, including:

1. Establishing the fiscal year of the commission;

2. Providing reasonable standards and procedures:

(a) For the establishment and meetings of other committees; and

(b) Governing any general or specific delegation of any authority or function of the commission;

3. Providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals of such proceedings and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the commissioners vote to close a meeting to the public in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each commissioner with no proxy votes allowed;

4. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the commission;

5. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar law of any compact state, the bylaws shall exclusively govern the personnel policies and programs of the commission;

6. Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees;

7. Providing a mechanism for concluding the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact and after the payment and/or reserving of all of its debts and obligations;

8. The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the compact states;

9. The commission shall maintain its financial records in accordance with the bylaws; and

10. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

D. The commission shall have the following powers:

1. To promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rule shall have the force and effect of law and shall be binding in all compact states;
2. To bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state psychology regulatory authority or other regulatory body responsible for psychology licensure to sue or be sued under applicable law shall not be affected;
3. To purchase and maintain insurance and bonds;
4. To borrow, accept or contract for services of personnel, including employees of a compact state;
5. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the compact and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel and other related personnel matters;
6. To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same, provided that at all times the commission shall strive to avoid any appearance of impropriety or conflict of interest;
7. To lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold, improve or use, any property, real, personal or mixed, provided that at all times the commission shall strive to avoid any appearance of impropriety;
8. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;
9. To establish a budget and make expenditures;
10. To borrow money;
11. To appoint committees, including advisory committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;
12. To provide and receive information from, and to cooperate with, law enforcement agencies;
13. To adopt and use an official seal; and
14. To perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of psychology licensure, temporary in-person, face-to-face practice and telepsychology practice.

E. The elected officers shall serve as the executive board, which shall have the power to act on behalf of the commission according to the terms of this compact as follows:

1. The executive board shall be composed of the following six members:

(a) Five voting members who are elected from the current membership of the commission by the commission;

(b) One ex officio, nonvoting member from the recognized membership organization composed of state and provincial psychology regulatory authorities.

2. The ex officio member must have served as staff with or a member on a state psychology regulatory authority and will be selected by its respective organization.

3. The commission may remove any member of the executive board as provided in bylaws.

4. The Executive Board shall meet at least annually.

5. The executive board shall have the following duties and responsibilities:

(a) Recommend to the entire commission changes to the rules or bylaws, changes to this compact, fees paid by compact states such as annual dues, and any other applicable fees;

(b) Ensure compact administration services are appropriately provided, contractual or otherwise;

(c) Prepare and recommend the budget;

(d) Maintain financial records on behalf of the commission;

(e) Monitor compact compliance of member states and provide compliance reports to the commission;

(f) Establish additional committees as necessary; and

(g) Other duties as provided in rules or bylaws.

F. The financing of the commission shall be as follows:

1. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization and ongoing activities.

2. The commission may accept any and all appropriate revenue sources, donations and grants of money, equipment, supplies, materials and services.

3. The commission may levy on and collect an annual assessment from each compact state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based on a formula to be determined by the commission, which shall promulgate a rule binding on all compact states.

4. The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same, nor shall the commission pledge the credit of any of the compact states, except by and with the authority of the compact state.

5. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

G. Qualified immunity, defense and indemnification provisions are as follows:

1. The members, officers, executive director, employees and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities, except that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or wilful or wanton misconduct of that person.

2. The commission shall defend any member, officer, executive director, employee or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities, except that nothing in this paragraph shall be construed to prohibit that person from retaining his or her own counsel, and provided further, that the actual or alleged act, error or omission did not result from that person's intentional or wilful or wanton misconduct.

3. The commission shall indemnify and hold harmless any member, officer, executive director, employee or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities, if the actual or alleged act, error or omission did not result from the intentional or wilful or wanton misconduct of that person.

ARTICLE XI

RULEMAKING

A. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted under this article. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the compact states reject a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, that rule shall have no further force and effect in any compact state.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

D. Prior to promulgation and adoption of a final rule or rules by the commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted on, the commission shall file a notice of proposed rulemaking:

1. On the website of the commission; and

2. On the website of each compact state's psychology regulatory authority or the publication in which each state would otherwise publish proposed rules.

E. The notice of proposed rulemaking shall include:

1. The proposed time, date and location of the meeting in which the rule will be considered and voted on;

2. The text of the proposed rule or amendment and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person; and

4. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

F. Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.

G. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five persons who submit comments independently of each other;

2. A governmental subdivision or agency; or

3. A duly appointed person in an association that has at least twenty-five members.

H. If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time and date of the scheduled public hearing. The following apply to a hearing:

1. All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This paragraph does not preclude the commission from making a transcript or recording of the hearing if it so chooses.

4. Nothing in this subsection shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this subsection.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

J. The commission, by majority vote of all members, shall take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

K. If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rule without a public hearing.

L. On a determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment or hearing, provided that the usual rulemaking procedures provided in the compact and in this section shall be retroactively applied to the rule as soon as reasonably practicable but not later than ninety days after the effective date of the rule. For the purposes of this subsection, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety or welfare;

2. Prevent a loss of commission or compact state funds;
3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule;
or
4. Protect public health and safety.

M. The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the chair of the commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

ARTICLE XII

OVERSIGHT, DISPUTE RESOLUTION AND ENFORCEMENT

A. Oversight of the commission is as follows:

1. The executive, legislative and judicial branches of state government in each compact state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.
2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a compact state pertaining to the subject matter of this compact that may affect the powers, responsibilities or actions of the commission.
3. The commission shall be entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission shall render a judgment or order void as to the commission, this compact or promulgated rules.

B. Default, technical assistance and termination provisions are as follows:

1. If the commission determines that a compact state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:
 - (a) Provide written notice to the defaulting state and other compact states of the nature of the default, the proposed means of remedying the default or any other action to be taken by the commission; and
 - (b) Provide remedial training and specific technical assistance regarding the default.
2. If a state in default fails to remedy the default, the defaulting state may be terminated from the compact on an affirmative vote of a majority of the compact states, and all rights, privileges and benefits conferred by this compact shall be terminated on the effective date of termination. A remedy of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.
3. Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be submitted by the

commission to the Governor, the majority and minority leaders of the defaulting state's legislature and each of the compact states.

4. A compact state that has been terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including obligations which extend beyond the effective date of termination.

5. The commission shall not bear any costs incurred by the state that is found to be in default or that has been terminated from the compact, unless agreed on in writing between the commission and the defaulting state.

6. The defaulting state may appeal the action of the commission by petitioning the United States district court for the state of Georgia or the federal district where the compact has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney fees.

C. Dispute resolution provisions are as follows:

1. On request by a compact state, the commission shall attempt to resolve disputes related to the compact which arise among compact states and between compact and non-compact states.

2. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes that arise before the commission.

D. Enforcement provisions are as follows:

1. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. By majority vote, the commission may initiate legal action in the United States district court for the state of Georgia or the federal district where the compact has its principal offices against a compact state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney fees.

3. The remedies in this subsection are not the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

ARTICLE XIII

DATE OF IMPLEMENTATION OF THE PSYCHOLOGY

INTERJURISDICTIONAL COMPACT COMMISSION and

ASSOCIATED RULES, WITHDRAWAL AND AMENDMENTS

A. The compact shall take effect on the date on which the compact is enacted into law in the seventh compact state. The provisions that become effective at that time shall be limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of this compact.

B. Any state that joins the compact subsequent to the commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule

that has been previously adopted by the commission shall have the full force and effect of law on the day the compact becomes law in that state.

C. Any compact state may withdraw from this compact by enacting a statute repealing the same, subject to the following:

1. A compact state's withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's psychology regulatory authority to comply with the investigative and adverse action reporting requirements of this compact before the effective date of withdrawal.

D. Nothing in this compact shall be construed to invalidate or prevent any psychology licensure agreement or other cooperative arrangement between a compact state and a non-compact state that does not conflict with the provisions of this compact.

E. This compact may be amended by the compact states. No amendment to this compact shall become effective and binding on any compact state until it is enacted into the law of all compact states.

ARTICLE XIV

CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. If this compact is held contrary to the constitution of any state member thereto, the compact remains in full force and effect as to the remaining compact states.

32-2087.01. Participation in compact as condition of employment: prohibition

An employer may not require a psychologist to seek licensure through the psychology interjurisdictional compact enacted by section 32-2087 as a condition of initial or continued employment as a psychologist in this state. An employer may require that a psychologist obtain and maintain a license to practice psychology in multiple states, if the psychologist is free to obtain and maintain the licenses by any means authorized by the laws of the respective states.

32-2087.02. Open meeting requirements

If a meeting, or a portion of a meeting, of the psychology interjurisdictional compact commission is closed pursuant to section 32-2087, article X, subsection B, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision consistent with title 38, chapter 3, article 3.1.

32-2087.03. State board of psychologist examiners: notice of commission actions

The state board of psychologist examiners, within thirty days after a psychology interjurisdictional compact commission action, shall post on the board's public website notice of any commission action that may affect a psychologist's license.

32-2091. Definitions

In this article, unless the context otherwise requires:

1. "Active license" means a current license issued by the board to a person licensed pursuant to this article.
2. "Adequate records" means records that contain, at a minimum, sufficient information to identify the client, the dates of service, the fee for service, the payments for service and the type of service given and copies of any reports that may have been made.
3. "Behavior analysis" means the design, implementation and evaluation of systematic environmental modifications by a behavior analyst to produce socially significant improvements in human behavior based on the principles of behavior identified through the experimental analysis of behavior. Behavior analysis does not include cognitive therapies or psychological testing, neuropsychology, psychotherapy, sex therapy, psychoanalysis, hypnotherapy and long-term counseling as treatment modalities.
4. "Behavior analysis services" means the use of behavior analysis to assist a person to learn new behavior, increase existing behavior, reduce existing behavior and emit behavior under precise environmental conditions. Behavior analysis includes behavioral programming and behavioral programs.
5. "Behavior analyst" means a person who is licensed pursuant to this article to practice behavior analysis.
6. "Client" means:
 - (a) A person or entity that receives behavior analysis services.
 - (b) A corporate entity, a governmental entity or any other organization that has a professional contract to provide services or benefits primarily to an organization rather than to an individual.
 - (c) An individual's legal guardian for decision making purposes, except that the individual is the client for issues that directly affect the individual's physical or emotional safety and issues that the legal guardian agrees to specifically reserve to the individual.
7. "Exploit" means an action by a behavior analyst who takes undue advantage of the professional association with a client, student or supervisee for the advantage or profit of the behavior analyst.
8. "Health care institution" means a facility that is licensed pursuant to title 36, chapter 4, article 1.
9. "Incompetent as a behavior analyst" means that a person who is licensed pursuant to article 4 of this chapter lacks the knowledge or skills of a behavior analyst to a degree that is likely to endanger the health of a client.
10. "Letter of concern" means an advisory letter to notify a licensee that while there is insufficient evidence to support disciplinary action the board believes the licensee should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in action against the license.
11. "Supervisee" means a person who acts under the extended authority of a behavior analyst to provide behavioral services and includes a person who is in training to provide these services.
12. "Unprofessional conduct" includes the following activities, whether occurring in this state or elsewhere:
 - (a) Obtaining a fee by fraud or misrepresentation.
 - (b) Betraying professional confidences.

- (c) Making or using statements of a character tending to deceive or mislead.
- (d) Aiding or abetting a person who is not licensed pursuant to this article in representing that person as a behavior analyst.
- (e) Gross negligence in the practice of a behavior analyst.
- (f) Sexual intimacies or sexual intercourse with a current client or a supervisee or with a former client within two years after the cessation or termination of treatment. For the purposes of this subdivision, "sexual intercourse" has the same meaning prescribed in section 13-1401.
- (g) Engaging or offering to engage as a behavior analyst in activities that are not congruent with the behavior analyst's professional education, training and experience.
- (h) Failing or refusing to maintain and retain adequate business, financial or professional records pertaining to the behavior analysis services provided to a client.
- (i) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.
- (j) Making a fraudulent or untrue statement to the board or its investigators, staff or consultants.
- (k) Violating any federal or state law that relates to the practice of behavior analysis or to obtain a license to practice behavior analysis.
- (l) Practicing behavior analysis while impaired or incapacitated to the extent and in a manner that jeopardizes the welfare of a client or renders the services provided ineffective.
- (m) Using fraud, misrepresentation or deception to obtain or attempt to obtain a behavior analysis license or to pass or attempt to pass a behavior analysis licensing examination or in assisting another person to do so.
- (n) Unprofessional conduct in another jurisdiction that resulted in censure, probation or a civil penalty or in the denial, suspension, restriction or revocation of a certificate or license to practice as a behavior analyst.
- (o) Providing services that are unnecessary or unsafe or otherwise engaging in activities as a behavior analyst that are unprofessional by current standards of practice.
- (p) Falsely or fraudulently claiming to have performed a professional service, charging for a service or representing a service as the licensee's own if the licensee has not rendered the service or assumed supervisory responsibility for the service.
- (q) Representing activities or services as being performed under the licensee's supervision if the behavior analyst has not assumed responsibility for them and has not exercised control, oversight and review.
- (r) Failing to obtain a client's informed and written consent to release personal or otherwise confidential information to another party unless the release is otherwise authorized by law.
- (s) Failing to make client records in the behavior analyst's possession promptly available to another behavior analyst on receipt of proper authorization to do so from the client, a minor client's parent, the client's legal guardian or the client's authorized representative or failing to comply with title 12, chapter 13, article 7.1.

(t) Failing to take reasonable steps to inform or protect a client's intended victim and inform the proper law enforcement officials if the behavior analyst becomes aware during the course of providing or supervising behavior analysis services that a client intends or plans to inflict serious bodily harm on another person.

(u) Failing to take reasonable steps to protect a client if the behavior analyst becomes aware during the course of providing or supervising behavior analysis services that a client intends or plans to inflict serious bodily harm on self.

(v) Abandoning or neglecting a client in need of immediate care without making suitable arrangements for continuation of the care.

(w) Engaging in direct or indirect personal solicitation of clients through the use of coercion, duress, undue influence, compulsion or intimidation practices.

(x) Engaging in false, deceptive or misleading advertising.

(y) Exploiting a client, student or supervisee.

(z) Failing to report information to the board regarding a possible act of unprofessional conduct committed by another behavior analyst who is licensed pursuant to this article unless this reporting violates the behavior analyst's confidential relationship with a client pursuant to this article. A behavior analyst who reports or provides information to the board in good faith is not subject to an action for civil damages.

(aa) Violating a formal board order, consent agreement, term of probation or stipulated agreement issued under this article.

(bb) Failing to furnish information in a timely manner to the board or its investigators or representatives if requested or subpoenaed by the board as prescribed by this article.

(cc) Failing to make available to a client or to the client's designated representative, on written request, a copy of the client's record, excluding raw test data, psychometric testing materials and other information as provided by law.

(dd) Violating an ethical standard adopted by the board.

(ee) Representing oneself as a psychologist or permitting others to do so if the behavior analyst is not also licensed as a psychologist pursuant to this chapter.

32-2091.01. [Fees](#)

A. The board, by a formal vote, shall establish fees for the following relating to the licensure of behavior analysts:

1. An application for an active license.
2. An application for a temporary license.
3. Renewal of an active license.
4. Issuance of an initial license.

B. The board may charge additional fees for services it deems necessary and appropriate to carry out this article. These fees shall not exceed the actual cost of providing the service.

C. The board shall not refund fees except as otherwise provided in this article. On special request and for good cause, the board may return the license renewal fee.

32-2091.02. Qualifications of applicant

A person who wishes to practice as a behavior analyst must be licensed pursuant to this article. An applicant for licensure must meet all of the following requirements:

1. Submit an application as prescribed by the board.
2. Be at least twenty-one years of age.
3. Be of good moral character. The board's standard to determine good moral character shall not violate federal discrimination laws.
4. Pay all applicable fees prescribed by the board.
5. Have the physical and mental capability to safely and competently engage in the practice of behavior analysis.
6. Not have committed any act or engaged in any conduct that would constitute grounds for disciplinary action against a licensee pursuant to this article.
7. Not have had a professional license or certificate refused, revoked, suspended or restricted in any regulatory jurisdiction in the United States or in another country for reasons that relate to unprofessional conduct. If the board finds that the applicant committed an act or engaged in conduct that would constitute grounds for disciplinary action in this state, the board shall determine to its satisfaction that the conduct has been corrected, monitored and resolved. If the matter has not been resolved, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.
8. Not have voluntarily surrendered a license or certificate in another regulatory jurisdiction in the United States or in another country while under investigation for reasons that relate to unprofessional conduct. If another jurisdiction has taken disciplinary action against an applicant, the board shall determine to its satisfaction that the cause for the action was corrected and the matter resolved. If the matter has not been resolved by that jurisdiction, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.
9. Not have a complaint, allegation or investigation pending before another regulatory jurisdiction in the United States or another country that relates to unprofessional conduct. If an applicant has any such complaints, allegations or investigations pending, the board shall suspend the application process and may not issue or deny a license to the applicant until the complaint, allegation or investigation is resolved.
10. Beginning January 1, 2022, have applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

32-2091.03. Educational and training standards for licensure

A. An applicant for licensure as a behavior analyst must meet standards adopted by the state board of psychologist examiners, including meeting graduate-level education and supervised experience requirements and passing a national examination. The state board of psychologist examiners shall adopt

standards consistent with the standards set by a nationally recognized behavior analyst certification board, except that:

1. The number of hours required for supervised experience must be at least one thousand five hundred hours of supervised work experience.

2. If the experience was obtained in a state that licensed behavior analysts at the time of the supervised work experience, the supervisor must be licensed in the state where the behavior analysis trainee services were provided.

B. The standards adopted for supervised experience must also be consistent with the standards set by a nationally recognized behavior analyst certification board. If the state board of psychologist examiners does not agree with a standard set by a nationally recognized behavior analyst certification board, the state board may adopt an alternate standard.

32-2091.04. Reciprocity

The board may issue a license to a person as a behavior analyst if the person is licensed or certified by a regulatory agency of another state that imposes requirements that are substantially equivalent to those imposed by this article at an equivalent or higher practice level as determined by the board, pays the fee prescribed by the board and meets all of the following requirements:

1. Submits a written application prescribed by the board.

2. Is of good moral character. The board's standard to determine good moral character shall not violate federal discrimination laws.

3. Documents to the board's satisfaction proof of initial licensure or certification at an equivalent designation for which the applicant is seeking licensure in this state and proof that the license or certificate is current and in good standing.

4. Documents to the board's satisfaction proof that any other license or certificate issued to the applicant by another state has not been suspended or revoked. If a licensee or certificate holder has been subjected to any other disciplinary action, the board may assess the magnitude of that action and make a decision regarding reciprocity based on this assessment.

5. Meets any other requirements prescribed by the board by rule.

32-2091.06. Temporary licenses; inactive status; reinstatement to active status

A. If the board requires an additional examination, it may issue a temporary license to a behavior analyst who is licensed or certified under the laws of another jurisdiction if the behavior analyst applies to the board for licensure and meets the educational, experience and first examination requirements of this article.

B. A temporary license issued pursuant to this section is effective from the date the application is approved until the last day of the month in which the applicant receives the results of the additional examination.

C. The board shall not extend, renew or reissue a temporary license or allow it to continue in effect beyond the period authorized by this section.

D. The board's denial of an application for licensure terminates a temporary license.

E. The board may place on inactive status and waive the license renewal fee requirements for a person who is temporarily or permanently unable to practice as a behavior analyst due to physical or mental incapacity or disability. An initial request for the waiver of renewal fees shall be accompanied by the renewal fee for an active license, which the board shall return if the waiver is granted. The board shall judge each request for the waiver of renewal fees on its own merits and may seek the verification it deems necessary to substantiate the facts of the situation. A behavior analyst who is retired is exempt from paying the renewal fee. A behavior analyst may request voluntary inactive status by submitting to the board an application on a form prescribed by the board and an affirmation that the behavior analyst will not practice as a behavior analyst in this state for the duration of the voluntary inactive status and by paying the required fee as prescribed by the board by rule.

F. A behavior analyst who is on any form of inactive status shall renew the inactive status every two years by submitting a renewal form provided by the board and paying any applicable fee as prescribed by the board by rule. A notice to renew is fully effective by mailing the renewal application to the licensee's last known address of record in the board's file. Notice is complete at the time of its deposit in the mail. A behavior analyst who is on inactive status due to physical or mental incapacity or disability or retirement shall use the term "inactive" to describe the person's status and shall not practice as a behavior analyst.

G. A behavior analyst on inactive status may request reinstatement of the license to active status by applying to the board. The board shall determine whether the person has been or is in violation of any provisions of this article and whether the person has maintained and updated the person's professional knowledge and capability to practice as a behavior analyst. The board may require the person to take or retake the licensure examinations and may require other knowledge or skill training experiences. If approved for active status, the person shall pay a renewal fee that equals the renewal fee for the license to be reinstated.

H. Beginning January 1, 2022, an applicant for a temporary license pursuant to this section shall have applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

32-2091.07. Active license; issuance; renewal; expiration; continuing education

A. If the applicant satisfies all of the requirements for licensure pursuant to this article, the board shall issue an active license and shall prorate the fee for issuing that license for the period remaining until the last day of the birth month of the applicant of the next odd-numbered year or even-numbered year pursuant to subsection B, paragraph 1 or 2 of this section.

B. A person holding an active or inactive license shall apply to renew the license on or before the last day of the birth month of the licensee every other year as follows:

1. In each odd-numbered year, if the licensee holds an odd-numbered license.
2. In each even-numbered year, if the licensee holds an even-numbered license.

C. The application shall include any applicable renewal fee as prescribed by the board by rule. Except as provided in section 32-4301 or 41-1092.11, a license expires if the licensee fails to renew the license on or before the last day of the licensee's birth month of the licensee's renewal year pursuant to subsection B of this section. A licensee may reinstate an expired license by paying a reinstatement fee as prescribed by the board by rule within two months after the last day of the licensee's birth month of that year. Beginning two months after the last day of the licensee's birth month during the licensee's renewal year until the last day of the licensee's birth month the following year, a licensee may reinstate the license by paying a reinstatement fee as prescribed by the board by rule and providing proof of competency and qualifications to the board. This proof may include continuing education, an oral examination, a written examination or an interview with the board. A licensee whose license is not reinstated within a year after the last day of

the licensee's birth month of the licensee's renewal year may reapply for licensure as prescribed by this article. A notice to renew is fully effective by mailing or electronically providing the notice to the licensee's last known address of record or last known email address of record in the board's file. Notice is complete at the time of deposit in the mail or when the email is sent.

D. A person renewing a license shall attach to the completed renewal form a report of disciplinary actions or restrictions placed against the license by another state licensing or disciplinary board or disciplinary actions or sanctions imposed by a state or national behavior analysis ethics committee or health care institution. The report shall include the name and address of the sanctioning agency or health care institution, the nature of the action taken and a general statement of the charges leading to the action.

E. A person who renews an active license to practice behavior analysis in this state shall satisfy a continuing education requirement designed to provide the necessary understanding of current developments, skills, procedures or treatment related to the practice of behavior analysis in the amount and during the period the board prescribes. The board shall prescribe documentation requirements.

F. A person who applies for an initial renewal of a license pursuant to this section on or after January 1, 2022 shall possess or have applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

32-2091.08. Exemptions from licensure

A. This article does not limit the activities, services and use of a title by the following:

1. A behavior analyst who is employed in a common school, high school or charter school setting and who is certified to use that title by the department of education if the services or activities are a part of the duties of that person's common school, high school or charter school employment.

2. An employee of a government agency in a subdoctorate position who uses the word "assistant" or "associate" after the title and who is supervised by a doctorate position employee who is licensed as a behavior analyst, including a temporary licensee.

3. A matriculated graduate student, or a trainee whose activities are part of a defined behavior analysis program of study, practicum, intensive practicum or supervised independent fieldwork. The practice under this paragraph requires direct supervision consistent with the standards set by a nationally recognized behavior analyst certification board, as determined by the state board of psychologist examiners. A student or trainee may not claim to be a behavior analyst and must use a title that clearly indicates the person's training status, such as "behavior analysis student" or "behavior analysis trainee".

4. A person who resides outside of this state and who is currently licensed or certified as a behavior analyst in that state if the activities and services conducted in this state are within the behavior analyst's customary area of practice, do not exceed twenty days per year and are not otherwise in violation of this article and the client, public or consumer is informed of the limited nature of these activities and services and that the behavior analyst is not licensed in this state.

5. A person in the employ of Arizona state university, northern Arizona university, the university of Arizona or another regionally accredited university in this state if the services are a part of the faculty duties of that person's salaried position and the person is participating in a graduate program.

6. A noncredentialed individual who delivers applied behavior analysis services under the extended authority and direction of a licensed behavior analyst. The individual may not claim to be a professional behavior analyst and must use a title indicating the person's nonprofessional status, such as "ABA technician", "behavior technician" or "tutor".

B. This article does not prevent a member of other recognized professions who is licensed, certified or regulated under the laws of this state from rendering services within that person's scope of practice and code of ethics if that person does not claim to be a behavior analyst.

32-2091.09. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements; civil penalty

A. The board on its own motion may investigate evidence that appears to show that a behavior analyst is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis. A health care institution shall, and any other person may, report to the board information that appears to show that a behavior analyst is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis. The board shall notify the licensee about whom information has been received as to the content of the information within one hundred twenty days after receiving the information. A person who reports or provides information to the board in good faith is not subject to an action for civil damages. The board, if requested, shall not disclose the name of the person providing information unless this information is essential to proceedings conducted pursuant to this section. The board shall report a health care institution that fails to report as required by this section to the institution's licensing agency.

B. A health care institution shall inform the board if the privileges of a licensee to practice in that institution are denied, revoked, suspended or limited because of actions by the licensee that appear to show that the person is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis, along with a general statement of the reasons that led the health care institution to take this action. A health care institution shall inform the board if a licensee under investigation resigns the licensee's privileges or if a licensee resigns in lieu of disciplinary action by the health care institution. Notification must include a general statement of the reasons for the resignation.

C. The board may require the licensee to undergo any combination of mental, physical or psychological competence examinations at the licensee's expense and shall conduct investigations necessary to determine the competence and conduct of the licensee.

D. Except as provided in subsection E of this section, the committee on behavior analysts shall review all complaints against behavior analysts and, based on the information provided pursuant to subsection A or B of this section, shall submit its recommendations to the full board.

E. If the board finds, based on the information it receives under subsection A or B of this section, that the public health, safety or welfare requires emergency action, the board may order a summary suspension of a license pending proceedings for revocation or other action. If the board issues this order, the board shall serve the licensee with a written notice of complaint and formal hearing pursuant to title 41, chapter 6, article 10, setting forth the charges made against the licensee and the licensee's right to a formal hearing before the board or an administrative law judge within sixty days. The board shall notify the committee on behavior analysts of any action taken pursuant to this subsection.

F. If the board finds that the information provided pursuant to subsection A or B of this section is not of sufficient seriousness to merit direct action against the licensee, the board may take any of the following actions:

1. Dismiss if the board believes the information is without merit.
2. File a letter of concern.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

G. If the board believes the information provided pursuant to subsection A or B of this section is or may be true, the board may request an informal interview with the licensee. If the licensee refuses to be interviewed or if pursuant to an interview the board determines that cause may exist to revoke or suspend the license, the board shall issue a formal complaint and hold a hearing pursuant to title 41, chapter 6, article 10. If as a result of an informal interview or a hearing the board determines that the facts do not warrant revocation or suspension of the license, the board may take any of the following actions:

1. Dismiss if the board believes the information is without merit.

2. File a letter of concern.

3. Issue a decree of censure.

4. Fix a period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. Probation may include temporary suspension for not more than twelve months, restriction of the license or restitution of fees to a client resulting from violations of this article. If a licensee fails to comply with a term of probation, the board may file a complaint and notice of hearing pursuant to title 41, chapter 6, article 10 and take further disciplinary action.

5. Enter into an agreement with the licensee to restrict or limit the licensee's practice or activities in order to rehabilitate the licensee, protect the public and ensure the licensee's ability to safely engage in the practice of behavior analysis.

6. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

H. If the board finds that the information provided pursuant to subsection A or B of this section warrants suspension or revocation of a license, the board shall hold a hearing pursuant to title 41, chapter 6, article 10. Notice of a complaint and hearing is fully effective by mailing a true copy to the licensee's last known address of record in the board's files. Notice is complete at the time of its deposit in the mail.

I. The board may impose a civil penalty of at least \$300 but not more than \$3,000 for each violation of this article or a rule adopted under this article. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it collects from civil penalties pursuant to this subsection in the state general fund.

J. If the board determines after a hearing that a licensee has committed an act of unprofessional conduct, is mentally or physically unable to safely engage in the practice of behavior analysis or is incompetent as a behavior analyst, the board may do any of the following in any combination and for any period of time it determines necessary:

1. Suspend or revoke the license.

2. Censure the licensee.

3. Place the licensee on probation.

K. A licensee may submit a written response to the board within thirty days after receiving a letter of concern. The response is a public document and shall be placed in the licensee's file.

L. A letter of concern is a public document and may be used in future disciplinary actions against a licensee. A decree of censure is an official action against the behavior analyst's license and may include a requirement that the licensee return fees to a client.

M. Except as provided in section 41-1092.08, subsection H, a person may appeal a final decision made pursuant to this section to the superior court pursuant to title 12, chapter 7, article 6.

N. If during the course of an investigation the board determines that a criminal violation may have occurred involving the delivery of behavior analysis services, it shall inform the appropriate criminal justice agency.

32-2091.10. Right to examine and copy evidence; subpoenas; right to counsel; confidentiality

A. In connection with an investigation conducted pursuant to this article, at all reasonable times the board and its authorized agents may examine and copy documents, reports, records and other physical evidence wherever located relating to the licensee's professional competence, unprofessional conduct or mental or physical ability to safely practice behavior analysis.

B. The board and its authorized agents may issue subpoenas to compel the attendance and testimony of witnesses and the production of documents and other physical evidence as prescribed in subsection A. The board may petition the superior court to enforce a subpoena.

C. Within five days of receiving a subpoena, a person may petition the board to revoke, limit or modify the subpoena. The board shall take this action if it determines that the evidence demanded is not relevant to the investigation. The person may petition the superior court for this relief without first petitioning the board.

D. A person appearing before the board or its authorized agents may be represented by an attorney.

E. Documents associated with an investigation are not open to the public and shall remain confidential. Documents may not be released without a court order compelling their production.

F. This section or any other provision of law making communications between a behavior analyst and client privileged does not apply to an investigation conducted pursuant to this article. The board, its employees and its agents shall keep in confidence the names of clients whose records are reviewed during an investigation.

32-2091.11. Injunction

A. The board may petition the superior court for an order to enjoin the following:

1. A person who is not licensed pursuant to this article from practicing behavior analysis.
2. The activities of a licensee that are an immediate threat to the public.
3. Criminal activities.

B. If the board seeks an injunction to stop the unlicensed practice of behavior analysis, it is sufficient to charge that the respondent on a certain day in a specific county engaged in the practice of behavior analysis without a license and without being exempt from the licensure requirements of this article. It is not necessary to show specific damages or injury.

C. The issuance of an injunction does not limit the board's authority to take other action against a licensee pursuant to this article.

32-2091.12. Violations; classification

A. It is a class 2 misdemeanor for a person who is not licensed pursuant to this article to engage in the practice of behavior analysis.

B. It is a class 2 misdemeanor for any person to:

1. Secure a license to practice pursuant to this article by fraud or deceit.
2. Impersonate a member of the board in order to issue a license to practice pursuant to this article.

C. It is a class 2 misdemeanor for a person who is not licensed pursuant to this article to use any combination of words, initials and symbols that leads the public to believe the person is licensed to practice behavior analysis in this state.

32-2091.13. Confidential communications

A. The confidential relations and communications between a client and a person who is licensed pursuant to this article, including temporary licensees, are placed on the same basis as those provided by law between an attorney and client. Unless the client waives the behavior analyst-client privilege in writing or in court testimony, a behavior analyst shall not voluntarily or involuntarily divulge information that is received by reason of the confidential nature of the behavior analyst's practice. The behavior analyst shall divulge to the board information it requires in connection with any investigation, public hearing or other proceeding. The behavior analyst-client privilege does not extend to cases in which the behavior analyst has a duty to report information as required by law.

B. The behavior analyst shall ensure that client records and communications are treated by clerical and paraprofessional staff at the same level of confidentiality and privilege required of the behavior analyst.

32-2091.14. Status as behavioral health professional

Notwithstanding any law to the contrary, the Arizona health care cost containment system administration shall recognize a behavior analyst who is licensed pursuant to this article as a behavioral health professional who is eligible for reimbursement of services.

32-2091.15. Committee on behavior analysts; membership; duties; board responsibilities

A. The committee on behavior analysts is established within the state board of psychologist examiners consisting of five members who are appointed by the governor and who serve at the pleasure of the governor. Each member shall serve for a term of five years beginning and ending on the third Monday in January. A committee member may not serve more than two full consecutive terms.

B. All members of the committee shall be licensed behavior analysts in professional practice, two of whom shall be members of the board. The committee shall annually elect a chairperson from among its membership.

C. Within one year after their initial appointment to the committee, members shall receive at least five hours of training prescribed by the board that includes instruction in ethics and open meeting requirements.

D. Committee members shall receive reimbursement of all expenses pursuant to title 38, chapter 4, article 2.

E. The committee shall make recommendations to the board on all matters relating to the licensing and regulation of behavior analysts. The committee may recommend regulatory changes to the board that are not specific to an individual licensee, but the committee shall obtain public input from behavior analyst licensees or their designated representatives before making any final recommendation to the board.

BOARD OF PSYCHOLOGIST EXAMINERS

Title 4, Chapter 26

Amend: R4-26-402, R4-26-403, R4-26-404.1, R4-26-404.2, R4-26-405, R4-26-408, R4-26-409,
R4-26-417



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: October 4, 2022

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

FROM: Council Staff

DATE: September 14, 2022

SUBJECT: BOARD OF PSYCHOLOGIST EXAMINERS
Title 4, Chapter 26, Article 4

Amend: R4-26-402, R4-26-403, R4-26-404.1, R4-26-404.2, R4-26-405,
R4-26-408, R4-26-409, R4-26-417

Summary:

This rulemaking from the Board of Psychologist Examiners (Board) seeks to amend eight rules in Title 4, Chapter 26, Article 4, relating to Behavior Analysts. In this rulemaking, the Board intends to amend the rules so that they are consistent with statute and industry and Board practice. The Board intends to delete the fee for issuance of an initial license, and clarify application and license requirements and processes.

The Board received an exception to the rulemaking moratorium to initiate this rulemaking on March 4, 2022 and final approval to submit it to the Council on July 18, 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 for the rules.

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

No, the Board indicates the rules do 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?

No, the Board indicates they did not review or rely on any study in conducting this rulemaking.

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

The Board indicates the minor changes in this rulemaking will have minimal economic impact. The Board states the requirement, and associated cost, to obtain a fingerprint clearance card results from statute (See A.R.S. § 32-2063(A)(14)) rather than rule.

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 Board believes that the provisions of the rulemaking are neither intrusive nor costly. No alternative methods were considered.

6. What are the economic impacts on stakeholders?

Licensees, applicants, and the Board are persons directly affected by, bearing the costs of, and benefitting from this rulemaking. The Board currently licenses 739 behavior analysts. There were 231 applicants for licensure last year. None of the applicants applied for licensure by reciprocity but six applied for licensure by universal recognition. As previously indicated, the requirement and associated cost for a fingerprint clearance card result from statute rather than rule.

The Board recently implemented processing efficiencies that allow it to eliminate the license issuance fee and the charge for certain services. This reduces regulatory burdens for licensees and applicants but has a negative impact on state revenue. Requiring continuing education in diversity is designed to address an important issue in the profession. This requirement does not increase the number of hours of required continuing education but rather simply specifies the subject matter of some of the hours. The Board plans to develop a continuing education program regarding jurisprudence for behavior analysts.

The Board incurred the cost of completing this rulemaking and will incur the cost of implementing and enforcing it. These costs are minimal.

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

No, the Board indicates the only change made between the proposed and final rulemaking was adding the word “including” in R4-26-409(A)(2) to indicate that the examples of diversity listed in R4-26-207(B)(3) was not exhaustive. The Board indicates this change was not substantial under the standards of A.R.S. § 41-1025(B).

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

Yes, the Board indicates they received a public comment requesting the examples of diversity listed in R4-26-207(B)(3) be expanded to include “ethnicity, language, or culture.” In completing this requested change to R4-26-207(B)(3), the Board also made a corresponding change in R4-26-409(A)(2).

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

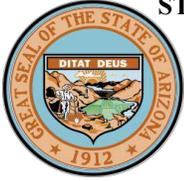
Yes, the Board indicates the rules require a license and the Board complies with A.R.S. § 41-1037 pursuant to A.R.S. § 41-1037(A)(2) because the Board issues individual licenses specifically authorized by state statute (A.R.S. § 32-2071).

10. **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 Board indicates there are no corresponding federal laws.

11. **Conclusion**

The Board seeks to amend eight rules in Title 4, Chapter 26, Article 4 relating to Behavior Analysts. The Board is seeking the standard 60-day delay effective date for this rulemaking. Council staff recommends approval of this rulemaking.



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BOARD OF PSYCHOLOGIST EXAMINERS
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DOUGLAS A. DUCEY
Governor

HEIDI HERBST PAAKKONEN
Executive Director

July 19, 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 4. Professions and Occupations; Chapter 26. Board of Psychologist Examiners; Article 4

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:

- A. Close of record date: The rulemaking record was closed on July 15, 2022, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).

An exemption to Executive Order 2022-01 was provided by Tony Hunter, of the Governor's Office, in an e-mail dated March 4, 2022. Authorization to submit the rule package to GRRC for its review and approval was provided by Brian Norman, of the Governor's office, by an e-mail dated July 18, 2022.
- 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 does not establish a new fee.
- D. Fee increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is not requested.
- F. Certification regarding studies: I certify that the preamble accurately discloses 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 full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.
- H. List of documents enclosed:
 - 1. Cover letter signed by the Executive Director;
 - 2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
 - 3. Economic, Small Business, and Consumer Impact Statement

Regards,

Heidi Herbst Paakkonen, MPA
Executive Director

NOTICE OF FINAL RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

PREAMBLE

1. Articles, Parts, and Sections Affected

Rulemaking Action

R4-26-402	Amend
R4-26-403	Amend
R4-26-404.1	Amend
R4-26-404.2	Amend
R4-26-405	Amend
R4-26-408	Amend
R4-26-409	Amend
R4-26-417	Amend

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

Authorizing statute: A.R.S. § 32-2063(A)(9)

Implementing statute: A.R.S. §§ 32-2063(A)(14) and 32-2091 through 32-2091.15

3. The effective date for the rules:

As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of 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. Citation to all related notices published in the *Register* to include 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. 776, April 15, 2022

Notice of Proposed Rulemaking: 28 A.A.R. 758, April 15, 2022

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

Name: Heidi Herbst Paakkonen

Address: Board of Psychologist Examiners
1740 W Adams Street, Suite 3403
Phoenix, AZ 85007

Telephone: (602) 542-3018

Fax: (602) 542-8279

E-mail: Heidi.paakkonen@psychboard.az.gov

Web site: www.psychboard.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 making minor changes needed to ensure the Board's rules are consistent with statute and industry and Board practice. An exemption to Executive Order 2022-01 was provided by Tony Hunter, of the Governor's Office, in an e-mail dated March 4, 2022.

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

The Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

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

Not applicable

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

The minor changes proposed in this rulemaking will have minimal economic impact. The requirement, and associated cost, to obtain a fingerprint clearance card results from statute (See A.R.S. § 32-2063(A)(14)) rather than rule. By synchronizing the Board's rules with the requirements of the Behavior Analyst Certification Board and the Association for Behavior Analysis International, the Board minimizes potential conflict in requirements for licensees.

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

The only change made between the proposed and final rulemakings is described in item 11.

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

The Board received one public comment. Dr. Marisa Menchola of Banner University Medicine asked that the examples of diversity listed in R4-26-207(B)(3) be expanded to include “ethnicity, language, or culture.” The Board appreciates Dr. Menchola’s comment and made the requested change.

Although not specifically addressed by Dr. Menchola, the Board made a corresponding change in R4-26-409(A)(2). The change is not substantial under the standards at A.R.S. § 41-1025(B). The use of the word “including” in R4-26-409(A)(2) provided notice the list in the proposed rulemaking was not exhaustive. No one attended the oral proceeding on May 20, 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 Board does not issue general permits. Rather, the Board issues individual licenses as required by the Board’s statutes to each person that is qualified by statute (See A.R.S. § 32-2091.02) and rule.

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

Federal law does not apply to the subject matter of the rules.

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

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:

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:

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

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS
ARTICLE 4. BEHAVIOR ANALYSTS

Section

R4-26-402. Fees and Charges

R4-26-403. Application for Initial License; Application for License by Reciprocity

R4-26-404.1. Education Requirement

R4-26-404.2. Supervised Experience Requirement

R4-26-405. Coursework Requirement

R4-26-408. License Renewal

R4-26-409. Continuing Education Requirement

R4-26-417. Licensing Time Frames

ARTICLE 4. BEHAVIOR ANALYSTS

R4-26-402. Fees and Charges

- A. As specifically authorized by A.R.S. §§ 32-2091.01(A) and 32-2091.07(B), the Board establishes and shall collect the following fees:
1. Application for an active license: \$350;
 2. Renewal of an active license: \$500;
 3. Renewal of an inactive license: \$85; and
 - ~~4. Issuance of an initial license: \$500; and~~
 - ~~5-4.~~ Reinstatement of expired license: \$200.
- B. Under the specific authority provided by A.R.S. § 36-3606(A)(3), the Board establishes and shall collect the following fee to register as an out-of-state health care provider of telehealth services: \$600.
- C. As specifically authorized by A.R.S. § 32-2091.01(B), the Board establishes ~~and shall collect~~ the following charges for the services specified. The specified charge is not applicable if the Board's executive director determines the requestor demonstrated the data will be used for a non-commercial purpose or the data are obtained from the Board's online directory:
- ~~1. Duplicate license: \$25;~~
 - ~~2. Duplicate renewal receipt: \$5;~~
 - ~~3. Copy of the Board's statutes and rules: \$5;~~
 - ~~4. Verification of a license: \$2;~~
 - ~~5. Audio recording of a Board meeting: \$10 per meeting;~~
 - ~~6-1.~~ Electronic medium containing the name and address of all licensees: \$.05 per name;
 - ~~7-2.~~ Customized electronic medium containing the name and address of all licensees: \$.25 per name;
 - ~~8-3.~~ Customized electronic medium: \$.35 per name; and
 - ~~9-4.~~ Copy of Board records, letters, minutes, applications, files, policy statements, and other non-confidential documents: \$.25 per page.
- D. Except as provided by law, including A.R.S. § 41-1077, the fees listed in subsections (A) and (B) are not refundable.

R4-26-403. Application for Initial License; Application for License by Reciprocity

- A. An individual who wishes to practice as a behavior analyst and is qualified under A.R.S. § 32-2091.02 for an initial license or under A.R.S. § 32-2091.04 for a license by reciprocity shall complete and submit an application form, which is available from the Board office and on its website.
- B. Additionally, an applicant shall submit:

1. An original, un-retouched, ~~passport-quality~~ photograph that is no larger than 1.5 X 2 inches in size and taken no more than 60 days before the date of application;
 2. The application fee required under R4-26-402;
 3. A copy of a valid fingerprint clearance card issued by the Department of Public Safety under A.R.S. Title 41, Chapter 12, Article 3.1 or evidence of application for a valid fingerprint clearance card;
 - ~~3-4.~~ A written request that Board staff verify with the BACB that the applicant passed the examination referenced in R4-26-404;
 - ~~4-5.~~ As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law; and
 - ~~5-6.~~ The Board's Mandatory Confidential Information form.
- C. Application for initial license. Additionally, an applicant for an initial license under A.R.S. § 32-2091.02 shall ensure the following is submitted directly to the Board:
1. Verification of supervised experience that meets the standards specified in R4-26-404.2. For the purpose of licensure, the Board shall accept the following as verification of supervised experience:
 - a. From the supervisor of the experience:
 - i. A copy of the BACB final experience verification form, signed by the supervisor, submitted by the applicant to the BACB when the applicant applied to the BACB for certification; or
 - ii. A completed Board verification form; or
 - b. From the applicant. If the applicant demonstrates to the Board that a supervisor cannot be located, or at the request of the Board, the applicant may submit a copy of each BACB final experience verification form the applicant submitted to the BACB when the applicant applied to the BACB for certification; and
 - c. If the Board requires additional information, the Board shall accept from the applicant or supervisor of the experience:
 - i. A copy of the plan required under R4-26-404.2(C)(6), and
 - ii. Letters or other documentation from third parties who observed the supervisory relationship;
 2. Official transcript for the graduate degree required under R4-26-404.1 submitted by the accredited institution of higher education that awarded the degree; and

3. Official transcript or other official document demonstrating the applicant completed the coursework required under R4-26-405 submitted by the accredited institution of higher education or BACB-approved program in which the coursework was completed; ~~and~~,
4. ~~Verification of licensure, certification, or registration by another regulatory jurisdiction submitted by the regulatory jurisdiction.~~

D. Application for license by reciprocity. Additionally, an applicant for license by reciprocity under A.R.S. § 32-2091.04 shall ensure the following is submitted directly to the Board:

1. Verification of supervised experience that meets the requirements specified by the BACB at the time the applicant was initially certified. For the purpose of licensure, the Board shall accept the verification of supervised experience specified in subsection (C)(1);
2. Official transcript for the graduate degree submitted by the accredited institution of higher education that awarded the degree;
3. Official transcript or other official document demonstrating the applicant completed coursework that meets the Verified Course Sequence requirements specified by the Association for Behavior Analysis, International, at the time the applicant was initially certified and submitted by the accredited institution of higher education providing the coursework; and
4. Official verification of licensure from every jurisdiction that issued a license to the applicant and a statement of whether the license is in good standing.

R4-26-404.1. Education Requirement

- A.** ~~This Section does not apply to an applicant who was certified as a behavior analyst by the BACB before January 1, 2015.~~
- B.** To be licensed as a behavior analyst in Arizona, an individual shall have a master's degree or higher completed:
1. From an accredited institution of higher education and
 2. In a program that ~~meets~~ met the requirements specified by the BACB at the time of graduation.

R4-26-404.2. Supervised Experience Requirement

- A.** Application of this Section:
1. ~~This Section does not apply to an individual who was certified by the BACB with at least 1500 hours of supervised experience before January 1, 2015; and~~
 2. ~~This Section applies in part to an individual who was certified by the BACB with fewer than 1500 hours of supervised experience before January 1, 2015. To be licensed in Arizona, the individual~~

~~shall complete additional hours of supervised experience to meet the 1500-hour requirement under A.R.S. § 32-2091.03 and ensure all hours of supervised experience obtained after December 31, 2014, meet the requirements of this Section.~~

- B.** To be licensed as a behavior analyst in Arizona, an individual shall have completed 1500 hours of supervised experience. The Board shall accept, for the purpose of licensure, hours of supervised experience obtained on or after January 1, 2015, that meet the following standards:
1. Supervised independent fieldwork. The supervisee shall be supervised at a frequency that meets the standards of the BACB at the time of supervision;
 2. Practicum. The supervisee shall:
 - a. Participate in a practicum in behavior analysis within a program approved by the BACB;
 - b. Achieve a passing grade in the practicum;
 - c. Obtain graduate-level academic credit for the practicum; and
 - d. Be supervised at a frequency that meets the standard of the BACB at the time of supervision;
 3. Intensive practicum. The supervisee shall:
 - a. Participate in an intensive practicum in behavior analysis within a program approved by the BACB;
 - b. Achieve a passing grade in the intensive practicum;
 - c. Obtain graduate-level academic credit for the intensive practicum; and
 - d. Be supervised at a frequency that meets the standards of the BACB at the time of supervision;
 4. Combination of experience categories. The supervisee may accrue hours of supervised experience in a single category or may combine any two or three categories listed in subsections (B)(1) through (3). However, the supervisee shall accrue supervised experience in only one category in each supervisory period; and
 5. For all categories of supervised experience, the supervisee shall accrue:
 - a. No fewer than 20 hours and no more than 130 hours, including time spent in supervision, each month; or
 - b. The number of hours that meets the standards of the BACB at the time of supervision.
- C.** Standards for supervised experience.
1. Onset of supervised experience. The Board shall not accept, for the purpose of licensure, hours of supervised experience completed before attending courses required under R4-26-405. However, the Board shall accept hours of supervised experience completed concurrent with attending courses required under R4-26-405.

2. Appropriate activities. The Board shall accept, for the purpose of licensure, hours of supervised experience that demonstrate participation in supervised experiences with various populations, at various sites, with multiple supervisors, and including all of the following activity areas:
 - a. Conducting assessments related to behavioral intervention;
 - b. Designing, implementing, and monitoring skill-acquisition and behavior-reduction programs;
 - c. Overseeing implementation of behavior-analytic programs by others;
 - d. Training, designing behavioral systems, and managing performance; and
 - e. Performing other activities directly related to behavior analysis such as attending planning meetings regarding the behavior analytic program, researching literature related to the program, and talking with others about the program.
3. Appropriate clients. The Board shall accept, for the purpose of licensure, hours of supervised experience with appropriate clients.
 - a. An appropriate client is one for whom behavior-analytic services are suitable.
 - b. A client is not appropriate if:
 - i. The client is related to the supervisee,
 - ii. The client's primary caretaker is related to the supervisee, or
 - iii. The supervisee is the client's primary caretaker.
4. Supervisor qualifications. The Board shall accept, for the purpose of licensure, hours of supervised experience only if the supervisor:
 - a. Was licensed by the state in which the supervision occurred during the period of supervised experience; or
 - b. If licensure of behavior analysts was not available or not in effect in the state in which the supervision occurred or during the period of supervised experience, was certified as a behavior analyst by the BACB; and
 - c. Was not related to, subordinate to, or employed by the supervisee during the period of supervised experience. Employment does not include payment made to the supervisor by the supervisee for supervisory services.
5. Nature of supervision. The Board shall accept, for the purpose of licensure, hours of supervised experience that are effective in improving and maintaining the behavior-analytic, professional, and ethical skills of the supervisee.
 - a. Effective supervision includes:
 - i. Developing performance expectations for the supervisee;
 - ii. Observing the supervisee and providing performance feedback on behavior-analytic activities with clients in the natural environment. In person, on-site observation is

- preferred but use of web cameras, video record, videoconferencing, or a similar means that provides synchronous or asynchronous observation is acceptable;
- iii. Modeling technical, professional, and ethical behavior for the supervisee;
 - iv. Guiding behavioral case conceptualization, problem solving, and decision making skills of the supervisee;
 - v. Reviewing written materials prepared by the supervisee such as behavior programs, data sheets, and reports;
 - vi. Providing oversight and evaluation of the effects of the supervisee's delivery of behavioral service; and
 - vii. Evaluating the effects of supervising the supervisee; and
- b. Effective supervision may be conducted:
 - i. Individually for at least half of the total supervised hours in each supervisory period; and
 - ii. In groups of two to 10 supervisees for no more than half of the total supervised hours in each supervisory period.
6. Supervision plan. The Board shall accept, for the purpose of licensure, hours of supervised experience for which the supervisee and supervisor executed a written plan before starting the supervised experience, which includes the following:
- a. States the responsibilities of both the supervisor and supervisee;
 - b. Requires the supervisor to complete eight hours of supervision training provided by BACB;
 - c. Includes a description of appropriate activities and instructional objectives;
 - d. Specifies the measurable circumstance under which the supervisor will complete the supervisee's Experience Verification Form;
 - e. Delineates the consequences if either supervisor or supervisee does not comply with the plan;
 - f. Requires the supervisee to obtain written permission from the supervisee's employer or manager when applicable; and
 - g. Requires both the supervisor and supervisee to comply with the ethical standard specified at R4-26-406.
7. Multiple supervisors or settings. The Board shall accept, for the purpose of licensure, hours of supervised experience provided by multiple supervisors or at multiple settings if all the hours of supervised experience meet the standards specified in subsections (C)(1) through (6)

R4-26-405. Coursework Requirement

- A. This Section does not apply to an applicant who was certified as a behavior analyst by the BACB before January 1, 2015.
- B. To be licensed as a behavior analyst in Arizona, an individual shall complete, as part of or in addition to the coursework necessary to obtain the graduate degree required under R4-26-404.1, a minimum of 270 classroom hours of graduate-level instruction. The individual shall ensure that the classroom hours include the following content areas: , the content of which is consistent with the minimum verified course sequence of the Association for Behavior Analysis International in effect at the time the instruction is obtained.
 - ~~1. Ethical and professional conduct in behavior analysis: 45 hours;~~
 - ~~2. Concepts and principles of behavior analysis: 45 hours;~~
 - ~~3. Research methods in behavior analysis: 45 hours:~~
 - ~~a. Measurement and data analysis: 25 hours; and~~
 - ~~b. Experimental design: 20 hours;~~
 - ~~4. Applied behavior analysis: 105 hours:~~
 - ~~a. Fundamental elements of behavior change and specific behavior change procedures: 45 hours;~~
 - ~~b. Identification of the problem and assessment: 30 hours;~~
 - ~~c. Intervention and behavior change considerations: 10 hours;~~
 - ~~d. Behavior change systems: 10 hours; and~~
 - ~~e. Implementation, management, and supervision: 10 hours; and~~
 - ~~5. Discretionary content related to behavior analysis: 30 hours.~~
- C. The Board shall accept classroom hours of graduate-level instruction completed at an accredited institution of higher education or in a program ~~approved by the BACB~~ consistent with the minimum verified course sequence of the Association for Behavior Analysis International in effect at the time the instruction is obtained.

R4-26-408. License Renewal

- A. A license issued by the Board, whether active or inactive, expires on the last day of a licensee’s birth month during the licensee’s renewal year.
- B. The Board shall provide a licensee with 60 days’ notice of the license renewal deadline. Failure to receive the notice does not excuse failure to renew timely.
- C. To renew a license, a licensee shall, on or before the last day of the licensee’s birth month during the licensee’s renewal year, submit to the Board a renewal application form, which is available from the Board office and on its website.

- D.** Additionally, to renew a license, a licensee shall submit:
1. The license renewal fee required under R4-26-402;
 2. A copy of a valid fingerprint clearance card issued by the Department of Public Safety under A.R.S. Title 41, Chapter 12, Article 3.1; and
 - ~~2.3~~ If the documentation previously submitted under R4-26-404(B) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired.
- E.** If a completed application is timely submitted under subsections (C) and (D) to renew an active license, the licensee may continue to practice behavior analysis under the active license until notified by the Board that the application for renewal has been approved or denied. If the Board denies license renewal, the licensee may continue to practice behavior analysis until the last day for seeking review of the Board's decision or a later date fixed by a reviewing court.
- F.** Under A.R.S. § 32-2091.07, the license of a licensee who fails to submit a renewal application on or before the last day of the licensee's birth month during the licensee's renewal year expires and the licensee shall immediately stop practicing as a behavior analyst in Arizona.
- G.** A behavior analyst whose license expires under subsection (F) may have the license reinstated by submitting the following to the Board within two months after last day of the licensee's birth month during the licensee's renewal year:
1. The license renewal application required under subsection (C) and the document required under subsection (D)(2),
 - ~~2. A sworn affidavit that the applicant has not practiced as a behavior analyst in Arizona since the applicant's license expired;~~ and
 - ~~3.2~~ The license renewal and license reinstatement fees.
- H.** A behavior analyst whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) may have the license reinstated by:
1. Complying with subsection (G) within one year after the last day of the licensee's birth month during the licensee's renewal year, and
 2. Providing proof of competency and qualifications to the Board.
- I.** A behavior analyst whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) or (H) may be licensed again only by complying with R4-26-403.

R4-26-409. Continuing Education Requirement

- A. A licensee shall complete a minimum of 30 hours of continuing education during each license period. A licensee shall ensure ~~that at least~~ a minimum of four hours of continuing education during each license period addresses each of the following topics:
1. ~~ethics. Ehtics; and~~
 2. Diversity including race, ethnicity, age, sex, gender, gender identification, neuro-differences, developmental abilities, physical abilities, language, culture, and income inequality.
- B. During a licensee's first license period, the licensee shall complete a pro-rated number of continuing education hours. To determine the number of continuing education hours required during the first license period, the licensee shall multiply the number of whole months from the month of license issuance to the end of the license period by 1.25.
- C. A licensee shall ensure that each continuing education program provides the necessary understanding of current developments, skills, or procedures related to the practice of behavior analysis. The following provide the necessary understanding of current developments, skills, or procedures related to the practice of behavior analysis:
1. College or university graduate coursework that directly relates to behavior analysis and is provided by an accredited educational institution: 15 hours of continuing education for each semester hour completed and 10 hours of continuing education for each quarter hour completed; a course syllabus and transcript are required for documentation;
 2. Continuing education programs offered by a BACB-approved provider: One hour of continuing education for each hour of participation; a certificate or letter from the BACB-approved provider is required for documentation;
 3. Self-study or correspondence course that is directly related to behavior analysis and offered by a BACB-approved provider or approved or offered by an accredited educational institution: Hours of continuing education determined by the course provider; a certificate or letter from the BACB-approved provider or a course syllabus and transcript from the accredited educational institution are required for documentation;
 4. Online course that is directly related to behavior analysis and offered by a BACB-approved provider or approved or offered by an accredited educational institution: Hours of continuing education determined by the course provider; a certificate or letter from the BACB-approved provider or a course syllabus and transcript from the accredited educational institution are required for documentation;
 5. Teaching a continuing education program offered by a BACB-approved provider or teaching a graduate university or college course offered by an accredited educational institution: One hour of continuing education for each hour taught; for graduate courses taught, 15 hours of continuing

education for each semester hour completed and 10 hours of continuing education for each quarter hour completed;

6. Credentialing activities or events pre-approved for continuing education and initiated by the BACB: One hour of continuing education for each hour of participation; documentation from the BACB is required;
7. Publication of a peer-reviewed article or text book on the practice of behavior analysis or serving as a reviewer or action editor of an article pertaining to behavior analysis: eight hours of continuing education for one publication and one hour of continuing education for one review; and
8. Attending a ~~Board~~ meeting of the Board or Committee on Behavior Analysts: Three hours for attending a morning or afternoon session of a ~~Board~~ meeting and six hours for attending a full-day ~~Board~~ meeting.

D. The number of hours of continuing education is limited as follows:

1. No more than 50 percent of the required hours may be obtained from teaching a continuing education program or course under subsection (C)(5). A licensee shall not obtain continuing education hours for teaching the same continuing education program or course more than once during each licensing period. A licensee shall earn no continuing education hours for participating as a member of a panel at a continuing education program or course;
2. No more than 25 percent of the required hours may be obtained from continuing education under each of subsections (C)(3), (6) and (7).
3. No more than six of the required hours may be obtained under subsection (C)(8). Hours obtained under subsection (C)(8) may be used to complete the ethics requirement under subsection (A).
4. Hours obtained in excess of the minimum required during a license period shall not be carried over to a subsequent license period.

E. A licensee shall obtain a certificate or other evidence of attendance from the provider of each continuing education program or course attended that includes the following:

1. Name of the licensee;
2. Title of the continuing education;
3. Name of the continuing education provider;
4. Date, time, and location of the continuing education; and
5. Number of hours of continuing education obtained.

F. A licensee shall maintain the evidence of attendance described in subsection (E) for two licensing periods and make the evidence available to the Board upon request.

- G.** The Board may audit a licensee’s compliance with the continuing education requirement. The Board may deny license renewal or take other disciplinary action against a licensee who fails to obtain or document the required continuing education hours. The Board may discipline a licensee who commits fraud, deceit, or misrepresentation regarding the continuing education hours.
- H.** A licensee who cannot comply with the continuing education requirement for good cause may seek an extension of time in which to comply by submitting a written request to the Board with the timely submission of the renewal application required under R4-26-408.
 - 1. Good cause includes but is not limited to illness or injury of the licensee or a close family member, death of a close family member, birth or adoption of a child, military service, relocation, natural disaster, financial hardship, or residence in a foreign country for at least 12 months of the license period.
 - 2. The Board shall not grant an extension longer than one year.
 - 3. A licensee who obtains hours of continuing education during an extension of time provided by the Board shall ensure the hours are reported only for the license period extended.
 - 4. A licensee who cannot comply with the continuing education requirement within an extension may apply to the Board for inactive license status under A.R.S. § 32-2091.06(E).

R4-26-417. Licensing Time Frames

- A.** For the purpose of A.R.S. § 41-1073, the Board establishes the following time frames:
 - 1. Initial license.
 - a. Overall time frame: 120 days,
 - b. Administrative completeness review time frame: 30 days, and
 - c. Substantive review time frame: 90 days;
 - 2. Renewal license.
 - a. Overall time frame: 150 days,
 - b. Administrative completeness review time frame: 60 days, and
 - c. Substantive review time frame: 90 days; and
 - 3. Initial registration as an out-of-state health care provider of telehealth services.
 - a. Overall time frame: 120 days,
 - b. Administrative completeness review time frame: 30 days, and
 - c. Substantive review time frame: 90 days.
- B.** An applicant and the Executive Director of the Board may agree in writing to extend the substantive review and overall time frames by no more than 25 percent of the overall time frame.

- C. The administrative completeness review time frame begins when the Board receives the application materials required under R4-26-403, R4-26-408(C) and (D), or as prescribed under A.R.S. § 36-3606. During the administrative completeness review time frame, the Board shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the Board shall specify in the notice what information is missing.
- D. An applicant whose application is incomplete shall submit the missing information to the Board within 240 days for an initial license. Both the administrative completeness review and overall time frames are suspended from the date of the Board's notice under subsection (C) until the Board receives all of the missing information.
- E. Upon receipt of all missing information, the Board shall notify the applicant that the application is complete. The Board shall not send a separate notice of completeness if the Board grants or denies a license within the administrative completeness review time frame listed in subsection (A)(1)(b) or (A)(2)(b).
- F. The substantive review time frame begins on the date of the Board's notice of administrative completeness.
- G. If the Board determines during the substantive review that additional information is needed, the Board shall send the applicant a comprehensive written request for additional information.
- H. An applicant who receives a request under subsection (G) shall submit the additional information to the Board within 240 days. Both the substantive review and overall time frames are suspended from the date of the Board's request until the Board receives the additional information.
- I. An applicant may receive a 30-day extension of the time provided under subsection (D) or (H) by providing written notice to the Board before the time expires. If an applicant fails to submit to the Board the missing or additional information within the time provided under subsection (D) or (H) or the time as extended, the Board shall close the applicant's file. To receive further consideration, a person whose file is closed shall re-apply.
- J. Within the overall time frame listed in subsection (A), the Board shall:
 1. Grant a license if the Board determines that the applicant meets all criteria required by statute and this Article; or
 2. Deny a license if the Board determines that the applicant does not meet all criteria required by statute and this Article.
- ~~K. If the Board grants a license under subsection (J)(1), the Board shall send the applicant a notice explaining that the Board shall issue the license only after the applicant pays the license issuance fee specified under R4-26-402 and pro-rated as prescribed under A.R.S. § 32-2091.07(A).~~
- L.K.** If the Board denies a license, the Board shall send the applicant a written notice explaining:

1. The reason for denial, with citations to supporting statutes or rules;
2. The applicant's right to appeal the denial by filing an appeal under A.R.S. Title 41, Chapter 6, Article 10;
3. The time for appealing the denial; and
4. The applicant's right to request an informal settlement conference.

M.L. If a time frame's last day falls on a Saturday, Sunday, or official state holiday, the next business day is the time frame's last day.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

1. Identification of the rulemaking:

The Board is making minor changes needed to ensure the Board's rules are consistent with statute and industry and Board practice. The changes include:

- Deleting the fee for issuance of a license;
- Reducing the circumstances under which the Board charges for services it provides;
- Adding information regarding application for a license by reciprocity;
- Adding the statutory requirement that an applicant provide a valid fingerprint clearance card;
- Clarifying that an applicant is required to meet the BACB requirements in existence at the time of graduation;
- Making the required course sequence consist with that of the Association for Behavior Analysis International; and
- Amending continuing education topics required of all licensees;

An exemption to Executive Order 2022-01 was provided by Tony Hunter, of the Governor's Office, in an e-mail dated March 4, 2022.

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

Until the rulemaking is complete, the Board's rules will continue to be inconsistent with statute and industry and Board practice.

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:

It is not good government practice to have rules that are inconsistent with statute and industry and Board practice.

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

When the rulemaking is completed, the Board's rules will be consistent with statute and industry and Board practice.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

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)).

The minor changes in this rulemaking will have minimal economic impact. The requirement, and associated cost, to obtain a fingerprint clearance card results from statute (See A.R.S. § 32-2063(A)(14)) rather than rule.

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: Heidi Herbst Paakkonen

Address: Board of Psychologist Examiners
1740 W Adams Street, Suite 3403
Phoenix, AZ 85007

Telephone: (602) 542-3018

Fax: (602) 542-8279

E-mail: Heidi.paakkonen@psychboard.az.gov

Web site: www.psychboard.az.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

Licensees, applicants, and the Board are persons directly affected by, bearing the costs of, and benefitting from this rulemaking. The Board currently licenses 739 behavior analysts. There were 231 applicants for licensure last year. None of the applicants applied for licensure by reciprocity but six applied for licensure by universal recognition. As previously indicated the requirement and associated cost for a fingerprint clearance card result from statute rather than rule.

The Board recently implemented processing efficiencies that allow it to eliminate the license issuance fee and the charge for certain services. This reduces regulatory burdens for licensees and applicants but has a negative impact on state revenue. Requiring continuing education in diversity is designed to address an important issue in the profession. This requirement does not increase the number of hours of required continuing education but rather simply specifies the subject matter of some of the hours. The Board plans to develop a continuing education program regarding jurisprudence for behavior analysts.

The Board incurred the cost of completing this rulemaking and will incur the cost of implementing and enforcing it. These costs are minimal.

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:
The Board is the only state agency directly affected by the rulemaking. It will not require another full-time employee to implement and enforce the rule changes.
 - b. Costs and benefits to political subdivisions directly affected by the rulemaking:
No political subdivision is directly affected by the rulemaking.
 - c. Costs and benefits to businesses directly affected by the rulemaking:
Behavior analysts are businesses directly affected by the rulemaking. Their costs and benefits are described in item 4.
6. Impact on private and public employment:
The Board expects the rulemaking to have no impact on private or public employment.
7. Impact on small businesses²:
- a. Identification of the small business subject to the rulemaking:
Behavior analysts are small businesses directly affected by the rulemaking.
 - b. Administrative and other costs required for compliance with the rulemaking:
Compliance with the rulemaking requires:
 - Submitting an application for licensure and paying a fee;
 - Submitting a copy of a valid fingerprint clearance card;
 - Submitting evidence an applicant is authorized under federal law to be present in the U.S.;
 - Ensuring graduate-degree coursework is consistent with the course sequence of the Association for Behavior Analysis International; and
 - Taking continuing education regarding diversity;
 - c. Description of methods that may be used to reduce the impact on small businesses:
Because all behavior analysts are small businesses, it is not possible to reduce the minimal impact of the rules on small business.
8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:
No private persons or consumers are directly affected by the rulemaking.
9. Probable effects on state revenues:
The Board has only one month of experience not collecting a fee for license issuance. During that month, the Board did not collect \$2,680 it would have collected previously for issuing

² Small business has the meaning specified in A.R.S. § 41-1001(21).

licenses to behavior analysts. This means, as provided under A.R.S. § 32-2065(B) and (F), the Board did not deposit \$268 in the state general fund. Assuming this month was typical, this means the effect of the rulemaking on state revenue will be a reduction of approximately \$3,216 annually.

10. Less intrusive or less costly alternative methods considered:

The provisions of the rulemaking are neither intrusive nor costly. No alternative methods were considered.

5/9/22, 8:11 AM

State of Arizona Mail - Comment on proposed change to R4-26-207 (B)



Heidi Paakkonen <heidi.paakkonen@psychboard.az.gov>

Comment on proposed change to R4-26-207 (B)

1 message

Menchola, Marisa - (menchola) <menchola@arizona.edu>

Fri, May 6, 2022 at 4:01 PM

To: "heidi.paakkonen@psychboard.az.gov" <heidi.paakkonen@psychboard.az.gov>

Good afternoon, Heidi,

I am so delighted and grateful to see the addition of a diversity component to the CE requirement for license. However, I noted that the proposed language does not include ethnicity, language, or culture:

At least four hours regarding diversity including race, age, sex, gender, gender identification, neuro-differences, developmental abilities, physical abilities, and income inequality.

I would like to respectfully ask the Board to consider adding the terms *ethnicity*, *language*, and *culture* to this list. As a few examples of why this matters: Hispanic/Latinx is considered an ethnicity, not a race, since Hispanic individuals can be White, Black, Indigenous, or multiracial. So as written, the language seems to exclude, for example, a training on working with Hispanic clients (an ethnicity), or a training on the psychological assessment of individuals for whom English is their second language, or a training on working with clients from a Muslim culture, for example.

Sincerely,

Marisa Menchola, Ph.D., ABPP-CN

Board Certified in Clinical Neuropsychology

Associate Clinical Professor,

Banner University Medicine – Neurology



STATE OF ARIZONA
BOARD OF PSYCHOLOGIST EXAMINERS
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DOUGLAS A. DUCEY
Governor

HEIDI HERBST PAAKKONEN
Executive Director

September 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: Board of Psychologist Examiners; Title 4, Chapter 26

Dear Ms. Sornsin:

On behalf of the Arizona Board of Psychologist Examiners ("Board") I submit the following additional information for consideration by the Governor's Regulatory Review Council specific to the rulemakings referenced above.

Council staff has posed the question whether the Board has done any additional analysis regarding the benefits of continuing education specific to diversity topics, specifically as they relate to public health and safety, as weighed against the costs required of licensees to take courses on these topics, a search finds at least 98 on-demand courses on this topic are currently offered by the American Psychological Association. These courses are priced the same as continuing education courses that are specific to other topics (e.g. anxiety and depression, death and grief, developmental psychology, etc.).

Until July of 2020, psychologists were required to complete 4 of the 40 total hours of continuing education on topics relating to domestic violence, child abuse, and elder abuse. At the request of some licensees, the Board eliminated that requirement through a rulemaking effective July 4, 2020. In doing so, the total number of required hours remained at 40. Similarly, the proposed requirement of 4 hours of diversity topics would be a subset of the 40 required hours - not an addition to the 40 required hours. Given the availability, accessibility, and consistent pricing of the courses offered by the American Psychological Association, it appears we can infer that the net effect to the licensees would be \$0.

Regards,

A handwritten signature in cursive script that reads "Heidi Herbst Paakkonen".

Heidi Herbst Paakkonen, M.P.A.
Executive Director



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Executive Director

Regular Session Meeting Minutes
(Corrected 1.2022)

Held virtually via Zoom on March 12, 2021

Board Members

Diana Davis-Wilson, DBH, BCBA – Chair
Bryan Davey, Ph.D., BCBA-D – Vice-Chair
Mathew A. Meier, Psy.D. – Secretary
Linda Caterino, Ph.D.
Aditya Dynar, Esq.
Stephen Gill, Ph.D.
Melanie Laboy, Esq.
Ramona N. Mellott, Ph.D.
Tamara Shreeve, MPA

1. CALL TO ORDER

Chairwoman Davis-Wilson called the Board's meeting to order at 8:32 a.m.

2. ROLL CALL

The following Board members participated in the virtual meeting: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was absent: Ms. Laboy.

ALSO PRESENT

The following Board staff participated in the virtual meeting: Heidi Herbst Paakkonen, Executive Director; Jennifer Michaelson, Deputy Director; Jeanne Galvin, Assistant Attorney General (AAG); Kathy Fowkes, Licensing Specialist; Krishna Poe, Programs and Projects Specialist; and, Andrea Cisneros, Minutes Administrator.

3. REMARKS/ANNOUNCEMENTS

This item was considered around 8:33 a.m.

● **Board Surveys**

Chairwoman Davis-Wilson encouraged meeting attendees to provide feedback by contacting Board staff and completing a Board Meeting Assessment Survey.

● **Board Member and Staff Appreciation**

Chairwoman Davis-Wilson acknowledged and thanked Board members and staff for their hard work and efforts.

● **Continuing education credit for Board meeting attendance**

Chairwoman Davis-Wilson announced that meeting attendees were eligible for continuing education credit. She stated that codewords would be provided throughout today's meeting that attendees are to email Board staff within one week of the meeting to receive the credit.

- **Student Intern Introductions**

Elizabeth Bronold

Caitlin Doherty

Ms. Bronold and Ms. Doherty participated in the virtual meeting and reported on their internship progress and their respective areas of research. Executive Director Herbst Paakkonen reported that Ms. Bronold and Ms. Doherty have been very professional and eager, and that both have met or exceeded established milestones throughout the internship process. She informed the Board that Ms. Bronold and Ms. Doherty will present their projects to the Board at a future meeting. The Board welcomed them both to the team.

4. CALL TO THE PUBLIC

This item was considered around 8:41 a.m.

No individuals addressed the Board during the Call to the Public.

5. COUNSEL UPDATE

This item was considered around 8:42 a.m.

AAG Galvin reported that the matter involving Dr. Sadeh is in Superior Court and that the State's answering brief on the Board's behalf is due next month.

6. CONSENT AGENDA - DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION

The Consent Agenda was considered around 8:42 a.m.

MOTION: Vice-Chairman Davey moved for the Board to approve the items as listed under the Consent Agenda.

SECOND: Mr. Dynar

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill and Ms. Shreeve. The following Board member was absent: Ms. Laboy and Dr. Mellott.

VOTE: 7-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

A. APPROVAL OF MINUTES

- February 12, 2021 Regular Session Minutes
- February 12, 2021 Executive Session Minutes
- September 4, 2020 Regular Session Minutes (proposed revisions)

B. EXECUTIVE DIRECTOR'S REPORT

C. DISCUSSION/DECISION REGARDING PSYCHOLOGIST APPLICATIONS

Requesting Approval to Sit for Examination (EPPP) Only

- 1) Denisha E. Liggett, Psy.D.
- 2) Jessica J. Moore, Psy.D.
- 3) Jodi Tichi, Psy.D.
- 4) Luis R. Sanchez, Ph.D.
- 5) Michele E. Stathatos, Ph.D.
- 6) Minja Vallo, Psy.D.

Requesting Approval to Sit for Examination (EPPP) & Licensure

- 1) Amy Leigh Becker, Psy.D.
- 2) Dawn M. Wear, Ph.D.
- 3) Eva Marie Nicolas, Psy.D.
- 4) Tessa Hamilton, Ph.D.
- 5) Veronica Poore, Psy.D.

Requesting Approval for Licensure by Waiver

- 1) Rosemary Hodges, Ph.D.

Requesting Approval for Licensure by Credential

- 1) Carla Natalucci-Hall, Psy.D.
- 2) Sarah Banks, Ph.D.

Requesting Approval of Temporary Licensure and to Sit for EPPP

- 1) Oksana Skyarov, Psy.D.

Requesting Approval for Licensure by Universal Recognition

- 1) Jeannette Higgins, Psy.D.
- 2) Nicole Ridout, Psy.D.

D. DISCUSSION/DECISION REGARDING BEHAVIOR ANALYST APPLICATIONS

- 1) Adriana Diaz, M.Ed.
- 2) Alannah Coley, Eisenmann
- 3) Elizabeth Johnson, M.S.
- 4) Joseph Michael Kamen, M.S.
- 5) Kate Horner, M.S.
- 6) Kelsey Erdmann, M.Ed.
- 7) Kylie Cairen Holt, M.S.
- 7) Lloyd Gilbert, M.S.
- 8) Madeline Roznos, M.S.Ed.
- 9) Steven Hassien, M.Ed.
- 10) Terri Ann Yonge Julian, M.Ed.
- 11) Tessa Grabowsky, M.S.
- 12) Yarelis Lopez Alvarez, M.S.
- 13) Franchesca M. Moore, M.A.
- 14)

E. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION REGARDING THIRD REQUEST TO RETAKE EPPP FROM BENIUS M. BEARD, PSY.D., TEMPORARY LICENSE HOLDER TL-27.

F. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION REGARDING APPLICATION FOR EXAM AND LICENSURE FROM JEFFREY S. MINTERT, PH.D.

G. DISCUSSION, CONSIDERATIONS, AND POSSIBLE ACTION REGARDING APPLICATION FOR TEMPORARY LICENSURE AND TO SIT FOR THE EPPP FROM XANAT I. MARTINEZ, PSY.D.

TIMED ITEMS – 8:45 A.M.

7. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING ACCEPTANCE OF A PROPOSED LETTER OF CONCERN FOR DR. CAROL GANDOLFO, PSY.D., IN COMPLAINT NO. T-20-08 AND/OR INITIAL CASE REVIEW

This item was considered around 8:47 a.m.

Dr. Gill was recused from the consideration of this matter.

Dr. Gandolfo and Attorneys Larry Cohen and Jonathan Riches participated in the virtual meeting during the Board's consideration of this matter.

AAG Galvin reported that this matter was scheduled for initial case review to determine whether Dr. Gandolfo was practicing psychology in Arizona without a license. She stated the parties negotiated the possible settlement of a Letter of Concern for the Board's consideration. AAG Galvin asked the Board to consider accepting the proposed settlement and vacate the initial case review to resolve this matter.

Mr. Riches reported that Dr. Gandolfo has been a licensed psychologist and family therapist in California for over 20 years. He stated that they provided voluminous documentation that demonstrated Dr. Gandolfo has not engaged in the unlawful practice of psychology. Mr. Riches stated that Dr. Gandolfo provided consulting services to institutional entities located in California and explained that these consultation services did not involve treatment of patients or delivery of any psychology services. He assured the Board that the services were provided in California where Dr. Gandolfo holds licensure and asked the Board to approve the proposed Letter of Concern to resolve this matter.

Dr. Meier observed that the address provided for the consulting services is located in Sedona, Arizona, and he questioned whether those services were provided to the California entities telephonically while Dr. Gandolfo was physically present in Arizona. Mr. Riches stated that some of the consulting services were provided via email and mail, but could not say whether they were conducted over the phone. Dr. Meier stated his concerns regarding the allegations of practicing psychology without a license if the consulting services were being provided by Dr. Gandolfo while she was in Arizona. AAG Galvin clarified that the entities with which Dr. Gandolfo was consulting were located in California where she was and remains licensed.

Ms. Shreeve questioned whether consulting services were provided to entities or individuals located in Arizona, noting that the information gathered during the investigation showed that Dr. Gandolfo had been providing services to the Sedona Fire Department. Dr. Meier pointed out that documentation submitted by the Sedona Fire Department indicated that Dr. Gandolfo provided peer support services and did not represent herself as a licensed psychologist. Dr. Meier stated that he remained concerned that Dr. Gandolfo may have been practicing telepsychology in Arizona without a license. Mr. Riches reiterated that they provided voluminous documentation to demonstrate that Dr. Gandolfo was not providing psychology services.

MOTION: Ms. Shreeve moved for the Board to vacate the initial case review in this matter and accept the Letter of Concern as final adjudication.

SECOND: Chairwoman Davis-Wilson

Dr. Meier stated his concerns that it was unclear whether psychology services were provided telephonically to the California entity while Dr. Gandolfo was located in Arizona.

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Caterino, Mr. Dynar, Ms. Shreeve. The following Board member voted against the motion: Dr. Meier. The following Board members were absent: Ms. Laboy and Dr. Mellott.

VOTE: 5-yay, 1-nay, 0-abstain, 1-recuse, 2-absent.

MOTION PASSED.

8. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION TO APPROVE THE COMMITTEE ON BEHAVIOR ANALYSTS RECOMMENDATION TO ISSUE A NON-DISCIPLINARY LETTER OF CONCERN AND ORDER FOR CONTINUING EDUCATION AND SELF-STUDY TO DYLAN HUFF, M.ED., FOR COMPLAINT NO. 20-51 AND/OR INITIAL CASE REVIEW

This item was considered around 9:02 a.m. at which time Dr. Mellott joined the virtual meeting.

Deputy Director Michaelsen reported that a complaint was filed by the attorney of a client's mother regarding the individuals involved in Agenda Item Nos. 8 and 9, Mr. Dylan Huff and Ms. Paige Huff. The parties were present with Attorney Mandi Karvis and participated in the virtual meeting during the Board's consideration of this matter. Deputy Director Michaelsen summarized that the complaint alleged that Mr. Huff authored a transition of care letter for the client which contained information about the client's mother that she felt portrayed her in an unfavorable light. The complaint also alleged that Ms. Huff engaged in unlicensed practice and provided supervision to individuals employed and those pursuing licensure. The CBA reviewed the cases and recommended issuance of a Letter of Concern and that Ms. Paige be granted licensure contingent upon entering into a consent agreement with the Board.

Ms. Karvis stated that they support the recommendations from the CBA regarding both matters. She stated that her clients have already addressed the concerns raised in this case and have taken action to address clearing up roles within the organization and with respect to documentation issues. Ms. Karvis stated that Mr. and Ms. Huff have been open and forthcoming with the Board about their practice shortcomings and areas of improvement, and have started looking into courses and organizations that they were recommended to join to help further their business to ensure compliance with regulation and statutes.

Dr. Caterino questioned whether students supervised by Ms. Huff were affected by the fact that she was not licensed during that time. The Board observed that the individuals that were supervised by Ms. Huff were direct line staff that were not working towards certification.

MOTION: Ms. Shreeve moved for the Board to accept the Letter of Concern and Order for CE and self-study for Mr. Huff, and to refer this matter to the BACB.

SECOND: Vice-Chairman Davey

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was absent: Ms. Laboy.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

The Board observed that the complainant reported concerns that clients were not aware that Ms. Huff was not licensed or that she was being supervised and was not able to practice independently. The Board also noted that Ms. Huff listened to the Committee's concerns and has since updated the information on their website that could have been misleading to the public.

MOTION: Vice-Chairman Davey moved for the Board to grant licensure for Ms. Huff with a Consent Agreement stipulating 12 months' probation to engage in practice monitoring and CE, and to refer this matter to the BACB and the Texas Board. Ms. Huff shall obtain a Board-approved practice monitor within 90 days of the effective date of the Board's Order.

SECOND: Ms. Shreeve

The Board encouraged Ms. Huff to engage with the Executive Director and Board staff in the event she encountered difficulties with the practice monitor requirement. Chairwoman Davis-Wilson stated her appreciation for the parties' eagerness to continue to learn through this process and further stated that they truly modeled professionalism and ability to demonstrate what can be done to turn this situation into a great opportunity for self-improvement.

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was absent: Ms. Laboy.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

9. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION TO APPROVE THE COMMITTEE ON BEHAVIOR ANALYSTS RECOMMENDATION TO APPROVE PAIGE HUFF'S APPLICATION FOR LICENSURE AS A BEHAVIOR ANALYST WITH THE ISSUANCE OF A SIGNED CONSENT AGREEMENT FOR COMPLAINT NO. 20-52 AND/OR INITIAL CASE REVIEW

The Board considered this matter in conjunction with Agenda Item No. 8. Please see the discussion captured under Agenda Item No. 8 for more details.

10. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION REGARDING COMPLAINT NO. 21-10 AGAINST DON AXSOM, PSY.D.

This item was considered around 9:20 a.m.

Dr. Axsom and Attorney Mandi Karvis participated in the virtual meeting during the Board's consideration of this matter.

Deputy Director Michaelsen summarized that the Board received an ASPPB report indicating that Dr. Axsom surrendered his Missouri license in May of 2020 for misconduct involving a client. The case was initiated and Dr. Axsom responded timely. After retaining counsel, Dr. Axsom indicated his desire to voluntarily surrender his Arizona license. Thereafter, Dr. Axsom was offered a proposed Consent Agreement for surrender of licensure, which he signed and returned to the Board. Deputy Director Michaelsen informed the Board that acceptance of the proposed Consent Agreement would resolve the case and will become effective April 1, 2021 to allow time for patient transfers. She also reported that the surrender is disciplinary action and therefore will be reported to the national databank.

Ms. Karvis stated that the psychologist understood the nature of the allegations against him in Missouri and recognized that he made poor choices in that regard. She stated that he ultimately surrendered his Missouri license and was willing to do the same in Arizona. Ms. Karvis asked the Board to accept the proposed Consent Agreement. She clarified that by allowing the surrender to become effective on April 1st provided Dr. Axsom with sufficient time for proper transition of clients.

MOTION: Dr. Caterino moved for the Board to accept the proposed Consent Agreement for Surrender of Licensure.

SECOND: Dr. Meier

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was absent: Ms. Laboy.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

THE FOLLOWING AGENDA ITEMS ARE UNTIMED AND MAY BE DISCUSSED AND DECIDED UPON AT VARIOUS TIMES THROUGHOUT THE MEETING AT THE DISCRETION OF THE CHAIR

11. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING JURISPRUDENCE LEARNING TOOL PROPOSAL

This item was considered around 10:27 a.m.

Executive Director Herbst Paakkonen reported that the learning tool proposal has been modified per the Board's prior discussion at its January 2020 meeting, and has been redesigned as a learning exercise with feedback rather than a strict examination. She stated that the Board had the option of investing \$5,000 annually to decrease the cost for purposes of reducing the licensees' fee from \$40 to \$35, and the proposal requires a start-up investment of \$5,000. Executive Director Herbst Paakkonen further reported on the recommendation to designate a certain number of CE credits to completion of this tool rather than impose new costs on top of the existing CE requirements.

Matt Turner, Ph.D., participated in the virtual meeting on behalf of Revolution AMC during the Board's consideration of this matter, presented to the Board on the proposed jurisprudence learning tool as modified per the Board's direction at its January 2020 meeting, and answered Board members' questions. The Board discussed the costs associated with initial startup and for the individuals to take the educational tool. The Board also discussed whether individuals should be required to take the tool at the time of initial licensure versus at the time of license renewal, or both.

Ms. Shreeve pointed out that the Board was seeking such a learning tool due to a number of cases adjudicated in the past year or two that involved licensees who were not familiar with the statutes and rules that govern their profession, some of which had been practicing for years. Ms. Shreeve emphasized the importance for licensees to stay up to date on current statute and rules, and stated that the proposed learning tool would address these concerns if licensees were required to complete it at the time of license renewal. Mr. Dynar suggested the staff research whether any licensure pathways preclude this type of requirement prior to moving forward. Dr. Meier recalled that the Board had elected to pursue such a learning tool as a form of CEs to allow for the ongoing review of current statutes and rules, rather than requiring its completion at the time of initial licensure.

Dr. Turner clarified that the current proposal would allow the Board to update the tool on an annual basis at which time any changes to the Board's statutes and/or rules could be incorporated at that time. Dr. Meier thanked Dr. Turner for his responsiveness to the feedback from the Board at its prior meeting and stated that the tool proposal looked great. Dr. Gill also thanked Dr. Turner for the proposal and for making the appropriate modifications according to the Board's prior discussion. He stated he liked that the tool focused on education for individuals to become more familiar with Arizona statutes and rules. Dr. Caterino stated she believed the educational tool should apply to all licensees, existing and new. The Board recognized that new licensees would be subject to taking the educational tool at the time of license renewal, which is prorated by the Board and takes place within the first two years of licensure.

Dr. Meier questioned whether there were concerns regarding the Board requiring its licensees to complete CEs that were developed by the Board in the proposed tool. AAG Galvin stated that she would look into this concern and report back to the Board. Dr. Turner clarified that the Board would cover the cost of initial startup and that the fees paid by the individuals taking the tool would not be directed to the Board. Chairwoman Davis-Wilson questioned whether a similar tool would be created for BAs to become more familiar with the statutes and rules that govern their profession. Dr. Turner clarified that the proposed tool applied to the practice of psychology, and stated that it was his understanding that the Board would be considering a similar tool for BAs in the future. Ms. Shreeve spoke in favor of creating a similar tool for BAs, and Chairwoman Davis-Wilson agreed stating that such a tool should be researched.

Dr. Mellott spoke in favor of the proposed tool being used at the time of renewal only. She stated that new licensees are faced with tremendous fees and any additional costs for licensure would become burdensome. Dr. Meier clarified that his focus has been requiring the tool at the time of license renewal only. Mr. Dynar

stated his concerns regarding subsidizing a CE course that the Board will require its licensees to complete. Ms. Shreeve cautioned the Board regarding possible procurement issues. Dr. Turner clarified that one option for the Board is to pay the initial startup cost for the tool, then individuals would pay \$40 to take it, which he believed was a reasonable cost and would not require subsidy from the Board. Mr. Dynar reiterated his concerns regarding the Board funding the startup costs and stated that it was unclear if this was problematic for the Board.

The Board discussed awarding a total of 4 CE credits for completing the tool, noting that a total of 40 CE hours are required for license renewal every two years with 4 credit hours dedicated to CE in ethics.

MOTION: Dr. Meier moved for the Board to approve the proposed jurisprudence learning tool for license renewals and awarding of 4 CE credit hours that can be applied to the hours required for license renewal, for the Board to cover the initial \$5,000 startup fee and licensee's paying \$40 to take it, pending the Executive Director confirming that there are no issues with the Board paying the initial startup fee.

SECOND: Ms. Shreeve

Dr. Mellott suggested the Board review feedback from individuals that have taken the jurisprudence tool on an annual basis. Chairwoman Davis-Wilson recommended finding a vendor that would allow for stopping the individual's progression without clicking the correct answer. Dr. Turner agreed and stated that he will be mindful of this request when choosing a vendor. Mr. Dynar spoke against the motion and stated that the initial development cost was legally problematic.

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member voted against the motion: Mr. Dynar. The following Board member was absent: Ms. Laboy.

VOTE: 7-yay, 1-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

12. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING INFORMATION RECEIVED CONCERNING THE EPPP – PART 2

This item was considered around 11:21 a.m.

Dr. Turner participated in the virtual meeting on behalf of ASPPB during the Board's consideration of this matter.

The Board observed that an article was published in the APA journal that called into question the validity of EPPP Part 2 and that the ASPPB has submitted information to the Board relative to the article and ASPPB's response. Dr. Turner explained that a little over a year ago, ASPPB received word that the APA was publishing the journal that they believe was a shotgun attack on the validation and process for which ASPPB has undertaken and specifically targeted EPPP Part 2 with some questioning of Part 1 and insinuation of test bias. He stated that ASPPB approached the APA and asked that they hold the article until such time that the ASPPB has had an opportunity to author a response article and the APA declined.

Dr. Turner reported that the purpose of the exam is to give licensing boards some assurance that the individual has demonstrated the necessary knowledge and skills to practice. Dr. Turner informed the Board regarding ASPPB's ongoing activities to address any concerns raised by the training community, including the creation of an examination advisors group and an item review panel. Dr. Meier stated he had heard concerns relating to the substantial cost associated with Part 2 as opposed to modifying the current examination to incorporate more of the practice component, and he questioned whether ASPPB could offer test preparation materials to offset and reduce the financial impact of taking Part 2. Dr. Turner reported that Part 2 was implemented when it was determined that incorporating a component regarding competency assessment of knowledge and skills was too long. He stated that he believed the knowledge based examination should take place earlier while the

skills based portion should be done at the time of licensure. He also stated that ASPPB has wanted to start building test preparation materials, but has raised concerns regarding conflict of interest. Dr. Turner stated that ASPPB takes these issues seriously and that in terms of validation, the process is very sound and follows current standards.

The Board thanked Dr. Turner for appearing.

13. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING POSSIBLE ADMINISTRATIVE RULE REVISIONS

a. Incorporating by reference the current version of the Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association

This item was considered around 1:17 p.m.

Joel Dvoskin, Ph.D., ABFP, participated in the virtual meeting during the Board's consideration of this matter, reported on the different versions of the Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association ("APA"). He reported on changes to the APA's Ethical Code of Conduct and policies that were established over the years relative to human rights considerations.

The Board thanked Dr. Dvoskin for his presentation, and discussed whether the Board should update its requirement to follow the previous version versus the current version of the APA's Ethical Codes of Conduct. Dr. Meier proposed incorporating language similar to the BAs requiring licensees to follow the most current code as opposed to changing the Board's rules each time there are amendments made. Ms. Shreeve disagreed and stated that she felt the Board should review any amendments made to the code prior to approving. Dr. Meier pointed out that psychologists are expected to follow the current code of ethics regardless of their location. Chairwoman Davis-Wilson clarified that the language for BAs includes that the most current APA ethics code shall be followed unless otherwise decided upon by the Board.

Ms. Shreeve pointed out that the Board currently requires licensees to follow the 2003 version of the APA's ethics code, and noted that the Board previously discussed concerns relating to the more recent versions in relation to military psychologists. Dr. Mellott commented that the Board must be mindful of any possible conflicts when determining whether to support the current version of the APA's ethics code. Dr. Meier stated that he had significant concerns regarding the Board's current requirement to follow an older version of the APA's ethics code and reiterated his support to incorporate language similar to BAs requiring licensees to follow the most current version unless the Board has determined otherwise. Dr. Mellott proposed that the Board review prior meeting minutes relating to this topic. Chairwoman Davis-Wilson recommended inviting a psychologist who specializes in this area to participate in further discussion with the Board on this topic. Dr. Meier stated that this was a substantial issue that needed to be addressed by the Board. Dr. Caterino spoke in favor of adopting language similar to that of the BAs.

MOTION: Dr. Caterino moved for the Board to adopt language similar to the BAs for licensees to follow the current APA ethics code unless the Board decided otherwise.

SECOND: Dr. Meier

After further discussion among Board members and staff, Drs. Caterino and Meier withdrew their motion. Chairwoman Davis-Wilson instructed staff to research prior meeting minutes for the Board's review in addition to inviting a specialty psychologist to appear before the Board and the documents referenced in Dr. Dvoskin's presentation. The Board tabled this matter and requested it be placed on a future meeting agenda after additional information is obtained for the Board's review and consideration relating to this topic. Mr. Dynar requested staff to provide a red-lined version of the code that outlines changes between the 2003 and current versions.

b. Adopting regulatory language addressing practicing in a capacity not related to the psychology license and/or that prescribes how services are represented

This item was considered around 12:41 p.m.

The Board recalled that this topic was discussed at its January 2021 meeting and a suggestion was made to adopt language similar to that of the BA code of conduct that could address some issues the Board has struggled with in terms of the practice of life coaching. Chairwoman Davis-Wilson clarified that the BA code of conduct requires licensees to disclose any non-evidence based or other practices. Mr. Dynar stated his concerns regarding the statutory language that references the designation of psychologist and suggested the Board consider changing the language to place more emphasis on individuals holding themselves out as holding a license. Dr. Mellott stated that statute currently classifies the use of any derivative of the word “psych” as a violation. Dr. Caterino spoke in favor of the current language and stated that the public may not be familiar with the distinction between a psychologist and licensed psychologist.

The Board noted prior cases involving licensed psychologists providing life coaching services and it was not clear to the consumer which services were being provided. Dr. Gill emphasized the importance to maintain appropriate documentation and written informed consent to clarify the type of services that are being provided and ensure that the client understands the services they are to be receiving. Mr. Dynar commented that licensees providing any service should be held to the same standard of care as a licensed professional. Dr. Meier spoke in favor of adopting language similar to that of the BAs to clarify that there must be a distinction between the services that are being provided by individuals offering services outside of psychology.

Executive Director Herbst Paakkonen reported that AzPA has been hearing these concerns and have formed a work group to dive deeper into this topic. She proposed that the Board table this item until such time that the AzPA has researched this topic and present some possible guidance. The Board elected to table this matter and return at a future meeting with a presentation from AzPA.

The Board recessed from 1:08 p.m. to 1:17 p.m.

c. Designating a portion of the continuing education requirements to the jurisprudence learning tool

This item was considered with Agenda Item No. 11. Please see the discussion and vote captured under Agenda Item No. 11 for further details.

d. Designating a portion of the continuing education requirements to multi-cultural competency content

This item was considered around 11:44 a.m.

Evelyn Burrell, Psy.D., AzPA President Elect, participated in the virtual meeting during the Board’s consideration of this matter and made a presentation to the Board regarding potentially designating a portion of CE requirements to multi-cultural competency content. Jessica Belokas, BCBA, representing the Arizona Association for Behavior Analysis, also participated in the virtual meeting during the Board’s consideration of this matter.

Dr. Burrell reported that the association met recently and discussed the need for our State to focus on diversity to ensure that practitioners are working ethically and effectively, and are culturally competent. She stated there is also a need to make sure that learning opportunities are being offered regularly and that there is an expected growth and understanding of diversity and what it means to be a culturally competent provider. Dr. Burrell informed the Board that AzPA could assist in offering such trainings similar to how they previously implemented CE trainings in ethics, domestic violence and child abuse due to changes in requirements. Dr. Mellott stated that she was very pleased with Dr. Burrell’s work and that she found her training sessions that she attended were great. Dr. Mellott spoke in support of requiring licensees to complete CEs in multi-cultural

competency content.

Dr. Mellott departed from the virtual meeting around 12:00 p.m.

Dr. Gill stated that the presentation was excellent and questioned the number of CE credit hours that should be designated to this topic. Dr. Burrell proposed requiring licensees to designate 4 CEs in this area for the hours required for license renewal. Vice-Chairman Davey stated that there are not a lot of CE courses available that cover this topic and recommended that BAs be required to complete CEs in this area as well. Chairwoman Davis-Wilson spoke in support of requiring licensees to designate CE hours required for license renewal in this topic. She stated concerns that while this topic is currently at the forefront of discussions, professionals may not see the value of this training over time.

Ms. Belokas reported on the AzABA's subcommittees and efforts in developing initiatives. She informed the Board that she is the newly elected Chairperson for the AzABA's Equity Diversion and Inclusion Committee and she spoke in support of creating requirements in this area. Chairwoman Davis-Wilson thanked Ms. Belokas for her report on AzABA's current activities. Dr. Gill commented on the necessity for quality courses that cover this topic. Dr. Burrell stated that quality education is what is expected from these trainings to promote further education and better practice.

Dr. Mellott rejoined the virtual meeting around 12:22 p.m.

The Board discussed the CE hours required for license renewal, and that the Board voted today to require licensees to designate 4 of those areas to the topic of jurisprudence. Mr. Dynar questioned whether requiring diversity training CEs violated Article 2 Section 36 of the Arizona Constitution. AAG Galvin stated that it may not apply in this instance, and that she would be happy to provide the Board with legal advice. Dr. Burrell commented that the requirement for diversity training allows for appropriate treatment to be made when working with various races and cultural backgrounds.

**MOTION: Dr. Meier moved for the Board to require designation of 4 CE hours in the subject of multi-cultural competency content for the CEs required for license renewal for psychologists and BAs.
SECOND: Dr. Mellott**

Mr. Dynar spoke against the motion and stated that he preferred to wait until the Board had written confirmation from counsel that there were no legal concerns with moving forward.

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member voted against the motion: Mr. Dynar. The following Board member was absent: Ms. Laboy.

VOTE: 7-yay, 1-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

The Board noted that formal rulemaking would be required to implement the change, and Executive Director Herbst Paakkonen reported that proposed rulemaking will take place later this year to address statutory changes that will become effective if matters currently pending legislation are passed and signed into law. Chairwoman Davis-Wilson pointed out that the formal rulemaking process allows for further discussion on these items.

14. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION REGARDING PROPOSED LEGISLATION INCLUDING, BUT NOT LIMITED TO, SB1253, HB2067, HB2128, HB2243, HB2267, HB2433, HB2454, HB2561, SB1482

This item was considered around 2:37 p.m.

The Board observed that SB1253 has successfully passed the Senate and Committee review in the House.

HB2067 involving criminal convictions has passed the House and is currently moving through the Senate. Dr. Meier questioned how HB 2067 would interact with the Board's bill, and AAG Galvin stated that she would research Dr. Meier's concerns and report back to the Board. HB2128, which expands the initial licensure fee waiver based on income and eligibility, has passed the House and may be stalled in the Senate.

HB2267 requires licensure boards on an annual basis to evaluate its fees against their funds to reduce and maintain the Board's fund balance at only 50% of its annual appropriation. This bill passed the House and will be heard next by the Senate Finance committee. Vice-Chairman Davey questioned whether there is a timeframe associated with when the fund balance must be decreased and proposed awarding bonuses to staff in an effort to reduce the balance. Dr. Mellott proposed offering a COVID relief-type package to individuals who have been licensed through the pandemic. Executive Director Herbst Paakkonen reported that such an analysis will take place to adjust the Board's fees after the bill becomes effective, which she anticipates occurring prior to September 1, 2021. Ms. Shreeve spoke in favor of increasing staff salaries. Executive Director Herbst Paakkonen reported that staff salary adjustments were included in this year's budget and that the Governor's Office recently lifted the previous prohibition from implementing such a change.

HB2454 regarding the expansion of telehealth services and allowing individuals licensed elsewhere to provide such services to Arizona residents provided that they register with their respective regulatory authority in this State. Executive Director Herbst Paakkonen explained that the registry process will create more work for staff and that the bill will come before the Board again at a future meeting for further discussion. HB2561 involving the PCSAS accreditation has passed the House and has been stalled in the Senate. SB1149 has been signed into law and requires the Board to issue licenses to individuals applying through this pathway who meet the requirements.

15. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION REGARDING FUTURE TERMINATION OF TEMPORARY LICENSES GRANTED PURSUANT TO §32-3124, AND TEMPORARY LICENSE EXEMPTIONS AUTHORIZED BY BOTH A.R.S. § 32-2075(A)(4) AND BY A.R.S. § 32-2091.08(4)

This item was considered around 2:54 p.m.

The Board observed that temporary licenses have been issued for the duration of the state of emergency, and discussed how to prevent a sudden or abrupt stop to an individual's practice when the state of emergency is rescinded to allow for a grace period to arrange for patient transfers. The Board also discussed temporary license exemptions authorized by statute. Ms. Shreeve spoke in support of allowing for a grace period in order to transfer patients. Dr. Gill suggested communicating with the Governor's Office regarding how the lifting of the state of emergency would impact the profession. Mr. Dynar stated his concerns regarding the Board's ability to extend licensure waivers beyond the declared state of emergency.

Chairwoman Davis-Wilson noted that the federal state of emergency has been extended to the end of April, and suggested the Board revisit this topic at its April 2021 meeting. Executive Director Herbst Paakkonen reported that the April agenda will also include a topic related to the Governor's Executive Order 2021-02.

16. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION REGARDING STATUS OF VACANT POSITION ON BOARD

This item was tabled to a future Board meeting.

17. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION ON CLAIMS REVIEW PROCESS ESTABLISHED BY A.R.S. § 32-2081

This item was tabled to a future Board meeting.

18. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING LICENSURE AND REGULATORY ISSUES RELATIVE TO COVID-19

This item was considered around 3:09 p.m.

Executive Director Herbst Paakkonen reported that some boards have returned to in-person meetings, including some that allow for in-person and remote participation. She stated that Board staff has discussed potentially holding hybrid sessions, but had identified concerns regarding reliability issues with the technology needed to facilitate such. Dr. Mellott reported that she is not permitted to travel officially at this time and that it would be difficult for her to attend any in-person sessions until such restrictions are lifted in her area.

The Board recognized that any in-person sessions would need to be accessible to the public and that while Board members and staff may have received the vaccine by the time the Board meets in person, the same may not be true for the public wishing to attend the Board's meetings. Ms. Shreeve suggested that the Board table this discussion until the Summer. Dr. Gill encouraged individuals receiving the vaccine to maintain their own record of it as confirmation. Mr. Dynar spoke in favor of tabling this discussion until a later time. Chairwoman Davis-Wilson stated that the current process was working well, and that staff would continue to monitor the situation and report any new developments back to the Board at a future meeting.

19. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION ON REQUEST TO WAIVE APPLICATION REQUIREMENT OF EPPP PART 2 – SKYLER LEONARD, Ph.D.

This item was considered around 9:38 a.m.

Dr. Leonard participated in the virtual meeting during the Board's consideration of this matter.

Ms. Fowkes reported that Dr. Leonard has submitted a request for a waiver of the licensing requirement to pass EPPP Part 2. She stated that Dr. Leonard has passed EPPP Part 1 and is eligible for licensure in Oregon, but received a job offer in Arizona. Dr. Leonard currently does not hold licensure in any other jurisdiction. The Board observed that in July of 2020, the Board determined that anyone applying for Arizona licensure after November 1, 2020 are required to take EPPP Part 2 in order to qualify for licensure if they have only taken EPPP Part 1 and are not licensed in any other jurisdiction. Ms. Fowkes clarified that Dr. Leonard was seeking the waiver since he is eligible for licensure in Oregon without having to take EPPP Part 2. Ms. Fowkes also pointed out that modification of the licensing application was warranted to clarify that a waiver was available for individuals who have passed EPPP Part 1 and are licensed elsewhere, as it does not specify in its current form that the individual must be licensed elsewhere. She stated that the waiver would no longer apply, and individuals would have an opportunity to apply for licensure under examination to take EPPP Part 2.

Dr. Gill pointed out that ASPPB recommended candidates be exempt from EPPP Part 2 if they passed Part 1 prior to December of 2019. The Board noted that Dr. Leonard passed Part 1 on December 19, 2019. Dr. Meier stated that the Board has already set forth rules that require individuals to take EPPP Part 2 if they have passed Part 1 but are not licensed elsewhere.

MOTION: Dr. Mellott moved for the Board to enter into Executive Session to obtain legal advice pursuant to A.R.S. § 38-431.03(A).

SECOND: Mr. Dynar

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was absent: Ms. Laboy.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

The Board entered into Executive Session at 9:47 a.m.

The Board returned to Open Session at 9:54 a.m.

No legal action was taken by the Board during Executive Session.

Dr. Mellott stated that Dr. Leonard would be required to take EPPP Part 2 in order to become eligible for

Arizona licensure according to the Board's current requirements. She proposed that Dr. Leonard either change the application to examination licensure and take Part 2 or withdraw his license application. Dr. Meier pointed out that Dr. Leonard would be eligible for Arizona licensure without having to take Part 2 if he first obtained licensure in Oregon and then reapplied to this Board. Chairwoman Davis-Wilson clarified that Dr. Leonard currently does not have a pending application for Arizona licensure, and was only seeking guidance as to whether he would be required to take EPPP Part 2 in order to obtain an Arizona license.

MOTION: Dr. Meier moved for the Board to deny the request for waiver of the licensing requirement to take EPPP Part 2.

SECOND: Dr. Caterino

The Board clarified that this was not a formal license denial, but rather, a denial of the request to waive the licensing requirement for the individual to complete EPPP Part 2 in order to become eligible for Arizona licensure.

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was absent: Ms. Laboy.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

20. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING THE COMMITTEE ON BEHAVIOR ANALYSTS RECOMMENDATION TO OPEN A COMPLAINT AGAINST JEFFREY SIEGEL, BCBA, LICENSED BEHAVIOR ANALYST

This item was considered around 3:16 p.m.

Deputy Director Michaelsen reported that Board staff and an applicant for behavior analyst licensure were not successful in contacting the applicant's former supervisor, Jeffrey Siegel, to obtain supervisor verification documentation. The CBA asked the Board to consider initiating a complaint against Mr. Siegel. The Board noted that the applicant's file remained incomplete without any verification documentation. Mr. Siegel later responded on February 22nd and submitted the supervise work experience forms for the applicant. The Board observed that Mr. Siegel last renewed his license in May of 2020, and that his contact information in the Board's database regarded a Phoenix location while the forms recently submitted by Mr. Siegel included a California address.

MOTION: Vice-Chairman Davey moved for the Board to initiate an investigation against Mr. Siegel based on violations of A.R.S. § 32-2091.12(K), (BB), and (DD).

SECOND: Ms. Shreeve

Chairwoman Davis-Wilson stated that the CBA was concerned regarding the delay in the applicant's ability to obtain verification of their supervision hours.

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was absent: Ms. Laboy.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

21. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING THE COMMITTEE ON BEHAVIOR ANALYSTS RECOMMENDATION TO OPEN A COMPLAINT AGAINST BRANDY COLLINS, BCBA

This item was considered around 3:21 p.m.

Deputy Director Michaelsen reported that the CBA reviewed an application that contained information indicating that Ms. Collins had provided remote supervision for the Arizona license candidate. Ms. Collins is licensed in Texas and does not hold Arizona licensure. The CBA recommended that the Board open a complaint for Ms. Collins practicing without a license by providing remote supervision for the Arizona applicant. Chairwoman Davis-Wilson observed that the supervision was being provided for an individual that was providing services to patients in Arizona.

MOTION: Chairwoman Davis-Wilson moved for the Board to initiate an investigation against Ms. Collins for possible violation of A.R.S. § 32-2091.12(A).

SECOND: Vice-Chairman Davey

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was absent: Ms. Laboy.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

22. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING APPLICATION FOR APPROVAL TO SIT FOR THE EPPP AND LICENSURE UPON A PASSING SCORE FROM CARLOS O. CALDERON, PH.D.

This item was considered around 8:44 a.m.

Dr. Caterino was recused from this matter.

Dr. Meier reported that the applicant graduated from ASU in 2012 in education psychology and has completed 1,500 internship hours.

MOTION: Dr. Meier moved for the Board to approve the application to sit for EPPP and licensure upon a passing score.

SECOND: Dr. Gill

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was recused: Dr. Caterino. The following Board members were absent: Ms. Laboy and Dr. Mellott.

VOTE: 8-yay, 0-nay, 0-abstain, 1-recuse, 2-absent.

MOTION PASSED.

23. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING APPLICATION FOR APPROVAL TO SIT FOR THE EPPP AND LICENSURE UPON A PASSING SCORE FROM RACHELLE C. BEARD, PH.D.

This item was considered around 9:26 a.m.

Dr. Mellott reported that the Application Review Committee was unable to review this matter due to lack of a quorum, as Dr. Caterino is recused. The Board observed that the applicant obtained her doctoral degree in school psychology at ASU in a program that is no longer available, but at the time was accredited and met the appropriate requirements. The Board also noted that the applicant has completed over 3,000 internship hours.

MOTION: Dr. Mellott moved for the Board to approve the application to sit for EPPP and licensure upon a passing score.

SECOND: Dr. Meier

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was recused: Dr. Caterino. The following Board member was absent: Ms. Laboy.

VOTE: 7-yay, 0-nay, 0-abstain, 1-recuse, 1-absent.

MOTION PASSED.

24. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING APPLICATION FOR APPROVAL TO SIT FOR THE EPPP AND LICENSURE UPON A PASSING SCORE FROM MARVIN JIM, PH.D.

This item was considered around 9:58 a.m.

Dr. Mellott reported that the application was complete, but questions were raised regarding a series of criminal convictions that occurred over 15 years ago. She stated that the Committee wanted Dr. Jim to appear before the Board to expand on how his life has changed since the prior events took place and how the Board can be assured there will be no reoccurrence of past events. Dr. Jim stated that he accepted the repercussions of his past behaviors.

MOTION: Dr. Caterino moved for the Board to enter into Executive Session to review and discuss confidential health information pursuant to A.R.S. § 38-431.03(A)(2).

SECOND: Ms. Shreeve

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was absent: Ms. Laboy.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

The Board entered into Executive Session at 10:02 a.m.

The Board returned to Open Session at 10:12 a.m.

No legal action was taken by the Board during Executive Session.

Dr. Mellott spoke in favor of approving the application in light of Dr. Jim's explanations and the information received by the Board, and given the applicant's remediation efforts and commitment to public safety while maintaining his health and ability to practice as a psychologist.

MOTION: Dr. Mellott moved for the Board to approve the application to sit for the EPPP and licensure upon a passing score for Dr. Jim.

SECOND: Dr. Meier

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was absent: Ms. Laboy.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

The Board recessed from 10:14 a.m. to 10:27 a.m.

25. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING APPLICATION FOR TEMPORARY LICENSURE AND TO SIT FOR THE EPPP FROM WEI LUO, PH.D.

This item was considered around 9:32 a.m.

Dr. Mellott was recused from this matter.

Dr. Caterino reported that Dr. Luo applied for temporary licensure and to sit for the EPPP, and that the only information missing from the application was his predoctoral practicum training plan. Ms. Fowkes clarified that a training plan is typically not needed for temporary licensure, and confirmed that the Board received Dr. Luo's postdoctoral training agreement that is required for temporary licensure.

MOTION: Dr. Caterino moved for the Board to approve the application for temporary licensure and to sit for the EPPP for Dr. Luo.

SECOND: Ms. Shreeve

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill and Ms. Shreeve. The following Board member was recused: Dr. Mellott. The following Board member was absent: Ms. Laboy.

VOTE: 7-yay, 0-nay, 0-abstain, 1-recuse, 1-absent.

MOTION PASSED.

26. NEW AGENDA ITEMS FOR FUTURE MEETINGS

This item was considered around 3:25 p.m.

Mr. Dynar requested staff provide court filings in the Board's meeting packet relative to matters being reported on under the Legal Advisor's Report.

Chairwoman Davis-Wilson noted that a number of topics were discussed during today's meeting that shall be placed on a future agenda along with items that were tabled.

27. ADJOURNMENT

MOTION: Dr. Meier moved for the Board to adjourn.

SECOND: Ms. Shreeve

VOTE: The following Board members voted in favor of the motion: Chairwoman Davis-Wilson, Vice-Chairman Davey, Dr. Meier, Dr. Caterino, Mr. Dynar, Dr. Gill, Dr. Mellott and Ms. Shreeve. The following Board member was absent: Ms. Laboy.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

The Board's meeting adjourned at 3:27 p.m.

Respectfully submitted,



Matt Meier, Psy.D.
Secretary



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 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

Authority: A.R.S. § 32-2063(A)(9) and (12)

Supp. 21-3

Editor’s Note: This Chapter contains amendments that were filed with the Secretary of State on March 3, 1995. At the time of filing, the original copy of the rulemaking package differed from the copy of the package filed at the same time. The Secretary of State uses the copy to prepare the Code supplement. The agency notified the Secretary of State that the wrong version was used. That led to the Secretary of State’s discovery of the two versions filed in March 1995. The Secretary of State then used the original package to publish a corrected edition with Supp. 95-2. The Secretary of State has since been advised by the Attorney General that the original version as published with Supp. 95-1 was correct with the exception of one phrase in R4-26-207 that was inadvertently omitted. With this publication, this Chapter reflects the correct amendments, and the omitted phrase in R4-26-207 has now been added.

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CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

or review. If a Board order or decision is issued as a final order or decision without an opportunity for rehearing or review, any application for judicial review of the order or decision shall be made within the time permitted for final orders or decisions.

- H.** For purposes of this Section, “contested case” is defined in A.R.S. § 41-1001 and “appealable agency action” is defined in A.R.S. § 41-1092.
- I.** A person who files a complaint with the Board against a licensee:
1. Is not a party to:
 - a. A Board administrative action, decision, or proceeding; or
 - b. A court proceeding for judicial review of a Board decision under A.R.S. §§ 12-901 through 12-914; and
 2. Is not entitled to seek rehearing or review of a Board action or decision under this Section.

Historical Note

Former Section R4-26-10 renumbered and adopted as R4-26-57 effective July 27, 1979 (Supp. 79-4). Amended subsection (c)(4) effective June 30, 1981 (Supp. 81-3).

Renumbered from R4-26-157 effective July 3, 1991 (Supp. 91-3). Amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-309. Complaints against Judicially Appointed Psychologists

- A.** A.R.S. § 32-2081(B) applies when a complaint is filed against a psychologist who conducts an evaluation, treatment, or psycho-education under a court order even if the psychologist is not specifically named in the court order.
- B.** If a complaint is filed against a psychologist who conducts an evaluation, treatment, or psycho-education under a court order, the Board shall return the complaint to the complainant with instructions that the court issuing the order must find there is a substantial basis to refer the complaint for consideration by the Board.

Historical Note

Section made by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-310. Disciplinary Supervision; Practice Monitor

- A.** If the Board determines, after a hearing conducted under A.R.S. Title 41, Chapter 6, Article 10, after an informal interview under A.R.S. § 32-2081(K), or through an agreement with the Board, that to protect public health and safety and ensure a licensee’s ability to engage safely in the practice of psychology, it is necessary to require that the licensee practice psychology for a specified term under another licensee who provides supervision or service as a practice monitor, the Board shall enter into an agreement with the licensee or issue an order regarding the disciplinary supervision or practice monitoring.
- B.** Payment between a licensee and supervisor or practice monitor.
1. A licensed psychologist who enters into an agreement with the Board or is ordered by the Board to practice psy-

chology under the supervision of another licensee may pay the supervising licensee for the supervisory service;

2. A licensed psychologist who provides supervisory service to a licensed psychologist who has been ordered by the Board or entered into an agreement with the Board to practice psychology under supervision may accept payment for the supervisory service;
 3. A licensed psychologist who enters into an agreement with the Board or is ordered by the Board to practice psychology under a practice monitor may pay the practice monitor for the service provided; and
 4. A licensed psychologist who provides practice monitoring to a licensed psychologist who has been ordered by the Board or entered into an agreement with the Board to practice psychology under a practice monitor may accept payment for the service provided.
- C.** A licensed psychologist who supervises or serves as a practice monitor for a licensed psychologist who has entered an agreement with the Board or been ordered by the Board to practice psychology under supervision or with a practice monitor is professionally responsible only for work specified in the agreement or order.

Historical Note

Section made by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

ARTICLE 4. BEHAVIOR ANALYSIS**R4-26-401. Definitions**

- A.** The definitions in A.R.S. § 32-2091 apply in this Article.
- B.** Additionally, in this Article:
1. “Accredited” means an institution of higher education:
 - a. In the U.S. is listed with the Council for Higher Education Accreditation,
 - b. In Canada is a member of the Universities Canada, and
 - c. Outside of the U.S. or Canada is determined by a member of the National Association of Credential Evaluation Services to have standards substantially similar to those of an institution of higher education in the U.S. or Canada.
 2. “Advertising” means any media used to disseminate information regarding the qualifications of a behavior analyst in order to solicit clients for behavior analysis services, regardless of whether the behavior analyst pays for the advertising.
 3. “Applicant” means an individual who applies to the Board for an initial or renewal license.
 4. “BACB” means the Behavior Analyst Certification Board, Inc.®.
 5. “Confidential information” means:
 - a. Minutes of an executive session of the Board except as provided under A.R.S. § 38-431.03(B);
 - b. A record that is classified as confidential by a statute or rule applicable to the Board;
 - c. Materials relating to an investigation by the Board, including a complaint, response, client record, witness statement, investigative report, and any information relating to a client’s diagnosis, treatment, or personal family life; and
 - d. The following regarding an applicant or licensee:
 - i. College or university transcripts if requested from the Board by a person other than the applicant or licensee;

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- ii. Home address, telephone number, and e-mail address;
 - iii. Test scores;
 - iv. Date of birth;
 - v. Place of birth; and
 - vi. Social Security number.
6. "Gross negligence" means an extreme departure from the ordinary standard of care.
 7. "Inactive status" means a behavior analyst maintains a license as a behavior analyst but is prohibited from practicing behavior analysis or holding oneself out as practicing behavior analysis in Arizona.
 8. "License period" means:
 - a. For a licensee who holds an odd-numbered license, the two years between the first day of the month after the licensee's birth month of one odd-numbered year and the last day of the licensee's birth month of the next odd-numbered year; and
 - b. For a licensee who holds an even-numbered license, the two years between the first day of the month after the licensee's birth month of one even-numbered year and the last day of the licensee's birth month of the next even-numbered year.
 9. "Mitigating circumstances that prevent resolution" means factors the Board considers in reviewing allegations against an applicant or licensee of unprofessional conduct occurring in another regulatory jurisdiction when the allegations would not prohibit licensure in Arizona. The factors may include:
 - a. Nature of the alleged conduct,
 - b. Severity of the alleged conduct,
 - c. Recentness of the alleged conduct,
 - d. Actions taken by the applicant to remedy potential violations, and
 - e. Whether the alleged conduct was an isolated incident or part of a recurring pattern.
 10. "Party" means the Board, an applicant, a licensee, or the state.
 11. "Psychometric testing materials" means manuals, instruments, protocols, and questions or stimuli used in testing.
 12. "Raw test data" means test scores, client responses to test questions or stimuli, and a behavior analyst's notes and recordings concerning client statements and behavior during examination.
 13. "Regulatory jurisdiction" means a state or territory of the United States, the District of Columbia, or a foreign country with authority to grant or deny entry into a profession or occupation.
 14. "Renewal year" means:
 - a. Each odd-numbered year for a licensee who holds an odd-numbered license, and
 - b. Each even-numbered year for a licensee who holds an even-numbered license.
 15. "Supervised experience" means supervised independent fieldwork, practicum, or intensive practicum.
 1. Application for an active license: \$350;
 2. Renewal of an active license: \$500;
 3. Renewal of an inactive license: \$85;
 4. Issuance of an initial license: \$500; and
 5. Reinstatement of expired license: \$200.
- B. Under the specific authority provided by A.R.S. § 36-3606(A)(3), the Board establishes and shall collect the following fee to register as an out-of-state health care provider of telehealth services: \$600.
 - C. As specifically authorized by A.R.S. § 32-2091.01(B), the Board establishes and shall collect the following charges for the services specified:
 1. Duplicate license: \$25;
 2. Duplicate renewal receipt: \$5;
 3. Copy of the Board's statutes and rules: \$5;
 4. Verification of a license: \$2;
 5. Audio recording of a Board meeting: \$10 per meeting;
 6. Electronic medium containing the name and address of all licensees: \$.05 per name;
 7. Customized electronic medium containing the name and address of all licensees: \$.25 per name;
 8. Customized electronic medium: \$.35 per name; and
 9. Copy of Board records, letters, minutes, applications, files, policy statements, and other non-confidential documents: \$.25 per page.
 - D. Except as provided by law, including A.R.S. § 41-1077, the fees listed in subsections (A) and (B) are not refundable.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Amended by final exempt rulemaking at 27 A.A.R. 1272, effective September 1, 2021 (Supp. 21-3).

R4-26-403. Application for Initial License

- A. An individual who wishes to practice as a behavior analyst and is qualified under A.R.S. § 32-2091.02 shall complete and submit an application form, which is available from the Board office and on its website.
- B. Additionally, an applicant shall submit:
 1. An original, un-retouched, passport-quality photograph that is no larger than 1.5 X 2 inches in size and taken no more than 60 days before the date of application;
 2. The application fee required under R4-26-402;
 3. A written request that Board staff verify with the BACB that the applicant passed the examination referenced in R4-26-404;
 4. As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law; and
 5. The Board's Mandatory Confidential Information form.
- C. Additionally, an applicant shall ensure the following is submitted directly to the Board:
 1. Verification of supervised experience that meets the standards specified in R4-26-404.2. For the purpose of licensure, the Board shall accept the following as verification of supervised experience:
 - a. From the supervisor of the experience:
 - i. A copy of the BACB final experience verification form, signed by the supervisor, submitted by the applicant to the BACB when the applicant applied to the BACB for certification; or
 - ii. A completed Board verification form; or
 - b. From the applicant. If the applicant demonstrates to the Board that a supervisor cannot be located, or at the request of the Board, the applicant may submit a

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1). Amended by final rulemaking 26 A.A.R. 1017, effective July 4, 2020 (Supp. 20-2).

R4-26-402. Fees and Charges

- A. As specifically authorized by A.R.S. §§ 32-2091.01(A) and 32-2091.07(B), the Board establishes and shall collect the following fees:

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- copy of each BACB final experience verification form the applicant submitted to the BACB when the applicant applied to the BACB for certification; and
- c. If the Board requires additional information, the Board shall accept from the applicant or supervisor of the experience:
 - i. A copy of the plan required under R4-26-404.2(C)(6), and
 - ii. Letters or other documentation from third parties who observed the supervisory relationship;
 2. Official transcript for the graduate degree required under R4-26-404.1 submitted by the accredited institution of higher education that awarded the degree;
 3. Official transcript or other official document demonstrating the applicant completed the coursework required under R4-26-405 submitted by the accredited institution of higher education or BACB-approved program in which the coursework was completed; and
 4. Verification of licensure, certification, or registration by another regulatory jurisdiction submitted by the regulatory jurisdiction.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1). Amended by final rulemaking at 24 A.A.R. 3100, effective December 11, 2018 (Supp. 18-4). Amended by final rulemaking 26 A.A.R. 1017, effective July 4, 2020 (Supp. 20-2).

R4-26-404. Examination Requirement

To be licensed as a behavior analyst in Arizona, an individual shall take and pass the examination administered by the BACB for Board Certified Behavior Analysts as part of its certification process.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).

R4-26-404.1. Education Requirement

- A. This Section does not apply to an applicant who was certified as a behavior analyst by the BACB before January 1, 2015.
- B. To be licensed as a behavior analyst in Arizona, an individual shall have a master's degree or higher completed:
 1. From an accredited institution of higher education and
 2. In a program that meets the requirements specified by the BACB.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1). Amended by final rulemaking 26 A.A.R. 1017, effective July 4, 2020 (Supp. 20-2).

R4-26-404.2. Supervised Experience Requirement

- A. Application of this Section:
 1. This Section does not apply to an individual who was certified by the BACB with at least 1500 hours of supervised experience before January 1, 2015; and
 2. This Section applies in part to an individual who was certified by the BACB with fewer than 1500 hours of supervised experience before January 1, 2015. To be licensed in Arizona, the individual shall complete additional hours of supervised experience to meet the 1500-hour requirement under A.R.S. § 32-2091.03 and ensure all

- hours of supervised experience obtained after December 31, 2014, meet the requirements of this Section.
- B. To be licensed as a behavior analyst in Arizona, an individual shall have completed 1500 hours of supervised experience. The Board shall accept, for the purpose of licensure, hours of supervised experience obtained on or after January 1, 2015, that meet the following standards:
 1. Supervised independent fieldwork. The supervisee shall be supervised at a frequency that meets the standards of the BACB at the time of supervision;
 2. Practicum. The supervisee shall:
 - a. Participate in a practicum in behavior analysis within a program approved by the BACB;
 - b. Achieve a passing grade in the practicum;
 - c. Obtain graduate-level academic credit for the practicum; and
 - d. Be supervised at a frequency that meets the standard of the BACB at the time of supervision;
 3. Intensive practicum. The supervisee shall:
 - a. Participate in an intensive practicum in behavior analysis within a program approved by the BACB;
 - b. Achieve a passing grade in the intensive practicum;
 - c. Obtain graduate-level academic credit for the intensive practicum; and
 - d. Be supervised at a frequency that meets the standards of the BACB at the time of supervision;
 4. Combination of experience categories. The supervisee may accrue hours of supervised experience in a single category or may combine any two or three categories listed in subsections (B)(1) through (3). However, the supervisee shall accrue supervised experience in only one category in each supervisory period; and
 5. For all categories of supervised experience, the supervisee shall accrue:
 - a. No fewer than 20 hours and no more than 130 hours, including time spent in supervision, each month; or
 - b. The number of hours that meets the standards of the BACB at the time of supervision.
 - C. Standards for supervised experience.
 1. Onset of supervised experience. The Board shall not accept, for the purpose of licensure, hours of supervised experience completed before attending courses required under R4-26-405. However, the Board shall accept hours of supervised experience completed concurrent with attending courses required under R4-26-405.
 2. Appropriate activities. The Board shall accept, for the purpose of licensure, hours of supervised experience that demonstrate participation in supervised experiences with various populations, at various sites, with multiple supervisors, and including all of the following activity areas:
 - a. Conducting assessments related to behavioral intervention;
 - b. Designing, implementing, and monitoring skill-acquisition and behavior-reduction programs;
 - c. Overseeing implementation of behavior-analytic programs by others;
 - d. Training, designing behavioral systems, and managing performance; and
 - e. Performing other activities directly related to behavior analysis such as attending planning meetings regarding the behavior analytic program, researching literature related to the program, and talking with others about the program.
 3. Appropriate clients. The Board shall accept, for the purpose of licensure, hours of supervised experience with appropriate clients.

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- a. An appropriate client is one for whom behavior-analytic services are suitable.
- b. A client is not appropriate if:
 - i. The client is related to the supervisee,
 - ii. The client's primary caretaker is related to the supervisee, or
 - iii. The supervisee is the client's primary caretaker.
4. Supervisor qualifications. The Board shall accept, for the purpose of licensure, hours of supervised experience only if the supervisor:
 - a. Was licensed by the state in which the supervision occurred during the period of supervised experience; or
 - b. If licensure of behavior analysts was not available or not in effect in the state in which the supervision occurred or during the period of supervised experience, was certified as a behavior analyst by the BACB; and
 - c. Was not related to, subordinate to, or employed by the supervisee during the period of supervised experience. Employment does not include payment made to the supervisor by the supervisee for supervisory services.
5. Nature of supervision. The Board shall accept, for the purpose of licensure, hours of supervised experience that are effective in improving and maintaining the behavior-analytic, professional, and ethical skills of the supervisee.
 - a. Effective supervision includes:
 - i. Developing performance expectations for the supervisee;
 - ii. Observing the supervisee and providing performance feedback on behavior-analytic activities with clients in the natural environment. In person, on-site observation is preferred but use of web cameras, video record, videoconferencing, or a similar means that provides synchronous observation is acceptable;
 - iii. Modeling technical, professional, and ethical behavior for the supervisee;
 - iv. Guiding behavioral case conceptualization, problem solving, and decision making skills of the supervisee;
 - v. Reviewing written materials prepared by the supervisee such as behavior programs, data sheets, and reports;
 - vi. Providing oversight and evaluation of the effects of the supervisee's delivery of behavioral service; and
 - vii. Evaluating the effects of supervising the supervisee; and
 - b. Effective supervision may be conducted:
 - i. Individually for at least half of the total supervised hours in each supervisory period; and
 - ii. In groups of two to 10 supervisees for no more than half of the total supervised hours in each supervisory period.
6. Supervision plan. The Board shall accept, for the purpose of licensure, hours of supervised experience for which the supervisee and supervisor executed a written plan before starting the supervised experience, which includes the following:
 - a. States the responsibilities of both the supervisor and supervisee;
 - b. Requires the supervisor to complete eight hours of supervision training provided by BACB;
 - c. Includes a description of appropriate activities and instructional objectives;
 - d. Specifies the measurable circumstance under which the supervisor will complete the supervisee's Experience Verification Form;
 - e. Delineates the consequences if either supervisor or supervisee does not comply with the plan;
 - f. Requires the supervisee to obtain written permission from the supervisee's employer or manager when applicable; and
 - g. Requires both the supervisor and supervisee to comply with the ethical standard specified at R4-26-406.
7. Multiple supervisors or settings. The Board shall accept, for the purpose of licensure, hours of supervised experience provided by multiple supervisors or at multiple settings if all the hours of supervised experience meet the standards specified in subsections (C)(1) through (6)

Historical Note

New Section made by final rulemaking at 24 A.A.R. 3100, effective December 11, 2018 (Supp. 18-4).
Amended by final rulemaking 26 A.A.R. 1017, effective July 4, 2020 (Supp. 20-2).

R4-26-405. Coursework Requirement

- A. This Section does not apply to an applicant who was certified as a behavior analyst by the BACB before January 1, 2015.
- B. To be licensed as a behavior analyst in Arizona, an individual shall complete, as part of or in addition to the coursework necessary to obtain the graduate degree required under R4-26-404.1, 270 classroom hours of graduate-level instruction. The individual shall ensure that the classroom hours include the following content areas:
 1. Ethical and professional conduct in behavior analysis: 45 hours;
 2. Concepts and principles of behavior analysis: 45 hours;
 3. Research methods in behavior analysis: 45 hours:
 - a. Measurement and data analysis: 25 hours; and
 - b. Experimental design: 20 hours;
 4. Applied behavior analysis: 105 hours:
 - a. Fundamental elements of behavior change and specific behavior change procedures: 45 hours;
 - b. Identification of the problem and assessment: 30 hours;
 - c. Intervention and behavior change considerations: 10 hours;
 - d. Behavior change systems: 10 hours; and
 - e. Implementation, management, and supervision: 10 hours; and
 5. Discretionary content related to behavior analysis: 30 hours.
- C. The Board shall accept classroom hours of graduate-level instruction completed at an accredited institution of higher education or in a program approved by the BACB.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).

R4-26-406. Ethical Standard

In fulfilling its responsibilities under law, the Board shall rely on the most current version of the BACB Professional and Ethical Compliance Code for Behavior Analysts, published by the BACB and available for review at the Board office and online at www.BACB.com unless the Board determines public health and safety is not sufficiently protected by the current version of the

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BACB Professional and Ethical Compliance Code for Behavior Analysts.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1). Amended by final rulemaking 26 A.A.R. 1017, effective July 4, 2020 (Supp. 20-2).

R4-26-407. Repealed**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1). Section amended by final rulemaking at 24 A.A.R. 3100, effective December 11, 2018 (Supp. 18-4). Repealed by final rulemaking 26 A.A.R. 1017, effective July 4, 2020 (Supp. 20-2).

R4-26-408. License Renewal

- A.** A license issued by the Board, whether active or inactive, expires on the last day of a licensee's birth month during the licensee's renewal year.
- B.** The Board shall provide a licensee with 60 days' notice of the license renewal deadline. Failure to receive the notice does not excuse failure to renew timely.
- C.** To renew a license, a licensee shall, on or before the last day of the licensee's birth month during the licensee's renewal year, submit to the Board a renewal application form, which is available from the Board office and on its website.
- D.** Additionally, to renew a license, a licensee shall submit:
1. The license renewal fee required under R4-26-402; and
 2. If the documentation previously submitted under R4-26-404(B) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired.
- E.** If a completed application is timely submitted under subsections (C) and (D) to renew an active license, the licensee may continue to practice behavior analysis under the active license until notified by the Board that the application for renewal has been approved or denied. If the Board denies license renewal, the licensee may continue to practice behavior analysis until the last day for seeking review of the Board's decision or a later date fixed by a reviewing court.
- F.** Under A.R.S. § 32-2091.07, the license of a licensee who fails to submit a renewal application on or before the last day of the licensee's birth month during the licensee's renewal year expires and the licensee shall immediately stop practicing as a behavior analyst in Arizona.
- G.** A behavior analyst whose license expires under subsection (F) may have the license reinstated by submitting the following to the Board within two months after last day of the licensee's birth month during the licensee's renewal year:
1. The license renewal application required under subsection (C) and the document required under subsection (D)(2),
 2. A sworn affidavit that the applicant has not practiced as a behavior analyst in Arizona since the applicant's license expired, and
 3. The license renewal and license reinstatement fees.
- H.** A behavior analyst whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) may have the license reinstated by:
1. Complying with subsection (G) within one year after the last day of the licensee's birth month during the licensee's renewal year, and
 2. Providing proof of competency and qualifications to the Board.
- I.** A behavior analyst whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) or (H) may be licensed again only by complying with R4-26-403.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1). Repealed by final rulemaking 26 A.A.R. 1017, effective July 4, 2020 (Supp. 20-2).

R4-26-409. Continuing Education Requirement

- A.** A licensee shall complete a minimum of 30 hours of continuing education during each license period. A licensee shall ensure that at least four hours of continuing education addresses ethics.
- B.** During a licensee's first license period, the licensee shall complete a pro-rated number of continuing education hours. To determine the number of continuing education hours required during the first license period, the licensee shall multiply the number of whole months from the month of license issuance to the end of the license period by 1.25.
- C.** A licensee shall ensure that each continuing education program provides the necessary understanding of current developments, skills, or procedures related to the practice of behavior analysis. The following provide the necessary understanding of current developments, skills, or procedures related to the practice of behavior analysis:
1. College or university graduate coursework that directly relates to behavior analysis and is provided by an accredited educational institution: 15 hours of continuing education for each semester hour completed and 10 hours of continuing education for each quarter hour completed; a course syllabus and transcript are required for documentation;
 2. Continuing education programs offered by a BACB-approved provider: One hour of continuing education for each hour of participation; a certificate or letter from the BACB-approved provider is required for documentation;
 3. Self-study or correspondence course that is directly related to behavior analysis and offered by a BACB-approved provider or approved or offered by an accredited educational institution: Hours of continuing education determined by the course provider; a certificate or letter from the BACB-approved provider or a course syllabus and transcript from the accredited educational institution are required for documentation;
 4. Online course that is directly related to behavior analysis and offered by a BACB-approved provider or approved or offered by an accredited educational institution: Hours of continuing education determined by the course provider; a certificate or letter from the BACB-approved provider or a course syllabus and transcript from the accredited educational institution are required for documentation;
 5. Teaching a continuing education program offered by a BACB-approved provider or teaching a graduate university or college course offered by an accredited educational institution: One hour of continuing education for each hour taught; for graduate courses taught, 15 hours of continuing education for each semester hour completed and 10 hours of continuing education for each quarter hour completed;

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6. Credentialing activities or events pre-approved for continuing education and initiated by the BACB: One hour of continuing education for each hour of participation; documentation from the BACB is required;
 7. Publication of a peer-reviewed article or text book on the practice of behavior analysis or serving as a reviewer or action editor of an article pertaining to behavior analysis: eight hours of continuing education for one publication and one hour of continuing education for one review; and
 8. Attending a Board meeting: Three hours for attending a morning or afternoon session of a Board meeting and six hours for attending a full-day Board meeting.
- D.** The number of hours of continuing education is limited as follows:
1. No more than 50 percent of the required hours may be obtained from teaching a continuing education program or course under subsection (C)(5). A licensee shall not obtain continuing education hours for teaching the same continuing education program or course more than once during each licensing period. A licensee shall earn no continuing education hours for participating as a member of a panel at a continuing education program or course;
 2. No more than 25 percent of the required hours may be obtained from continuing education under each of subsections (C)(3), (6) and (7).
 3. No more than six of the required hours may be obtained under subsection (C)(8). Hours obtained under subsection (C)(8) may be used to complete the ethics requirement under subsection (A).
 4. Hours obtained in excess of the minimum required during a license period shall not be carried over to a subsequent license period.
- E.** A licensee shall obtain a certificate or other evidence of attendance from the provider of each continuing education program or course attended that includes the following:
1. Name of the licensee;
 2. Title of the continuing education;
 3. Name of the continuing education provider;
 4. Date, time, and location of the continuing education; and
 5. Number of hours of continuing education obtained.
- F.** A licensee shall maintain the evidence of attendance described in subsection (E) for two licensing periods and make the evidence available to the Board upon request.
- G.** The Board may audit a licensee's compliance with the continuing education requirement. The Board may deny license renewal or take other disciplinary action against a licensee who fails to obtain or document the required continuing education hours. The Board may discipline a licensee who commits fraud, deceit, or misrepresentation regarding the continuing education hours.
- H.** A licensee who cannot comply with the continuing education requirement for good cause may seek an extension of time in which to comply by submitting a written request to the Board with the timely submission of the renewal application required under R4-26-408.
1. Good cause includes but is not limited to illness or injury of the licensee or a close family member, death of a close family member, birth or adoption of a child, military service, relocation, natural disaster, financial hardship, or residence in a foreign country for at least 12 months of the license period.
 2. The Board shall not grant an extension longer than one year.
 3. A licensee who obtains hours of continuing education during an extension of time provided by the Board shall ensure the hours are reported only for the license period extended.
4. A licensee who cannot comply with the continuing education requirement within an extension may apply to the Board for inactive license status under A.R.S. § 32-2091.06(E).
- Historical Note**
- Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1). Section amended by final rulemaking at 24 A.A.R. 3100, effective December 11, 2018 (Supp. 18-4).
- R4-26-410. Voluntary Inactive Status**
- A.** A licensed behavior analyst may request that the Board place the license on inactive status for one of the following reasons:
1. The behavior analyst no longer provides behavior analysis services in Arizona,
 2. The behavior analyst is retired, or
 3. The behavior analyst is physically or mentally incapacitated or otherwise disabled.
- B.** To place a license on inactive status, a licensee shall comply with R4-26-408.
- C.** To remain licensed, a licensee on inactive status shall comply with R4-26-408 on or before the last day of the licensee's birth month during the licensee's renewal year.
- Historical Note**
- Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).
- R4-26-411. License Reinstatement**
- A licensee seeking reinstatement from an inactive to an active license shall:
1. Comply with the provisions of R4-26-408(C) and (D);
 2. Submit evidence of completing a pro-rated number of hours of continuing education. The licensee shall calculate the number of continuing education hours required by multiplying the number of whole months that the license was on inactive status by 1.25; and
 3. Complete any other requirements the Board determines are necessary to ensure that the licensee has maintained and updated the licensee's ability to practice as a behavior analyst.
- Historical Note**
- Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).
- R4-26-412. Client Records**
- A.** A licensee shall not condition release of a client's record on payment for services by the client or a third party.
- B.** A licensee shall release a client's raw test data to another licensed behavior analyst only after obtaining the client's informed, written consent to the release. Without a client's informed, written consent, a licensee shall release the client's raw test data only to the extent required by law or under court order compelling production.
- C.** A licensee shall retain all client records under the licensee's control for at least six years from the date of the last client activity. If a client is a minor, the licensee shall retain the client's record for at least three years past the client's 18th birthday or six years from the date of the last client activity, whichever is longer.

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- D.** Audio or video tapes created primarily for training or supervisory purposes are exempt from the requirement of subsection (C).
- E.** A licensee who is notified by the Board or municipal, state, or federal officials of an investigation or pending case shall retain all records relating to the investigation or case until the licensee receives written notice that the investigation is complete or the case is closed.
- F.** A licensee may retain client records in electronic form. The licensee shall ensure that client records in electronic form are stored securely and a backup copy is maintained.
- G.** The provisions of this Section apply to all licensees including those on inactive status.
- B.** The Board shall ensure that the written notice of informal interview contains the following information:
1. The time, date, and place of the informal interview;
 2. An explanation of the informal nature of the proceedings;
 3. The individual's right to appear with legal counsel who is authorized to practice law in Arizona or without legal counsel;
 4. A statement of the allegations and issues involved with a citation to relevant statutes and rules;
 5. The individual's right to a formal hearing under A.R.S. Title 41, Chapter 6, Article 10 instead of the informal interview;
 6. The licensee's right, as specified in A.R.S. § 32-3206, to request a copy of information the Board will consider in making its determination; and
 7. Notice that the Board may take disciplinary action as a result of the informal interview if it finds the individual violated A.R.S. Title 32, Chapter 19.1, Article 4, or this Article;

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

R4-26-413. Change of Name, Mailing Address, E-mail Address, or Telephone Number

- A.** The Board shall communicate with a licensee using the contact information provided to the Board. To ensure timely communication from the Board, a licensee shall notify the Board, in writing, within 30 days of any change of name, mailing address, e-mail address, or residential or business telephone number.
- B.** A licensee who reports a name change shall submit to the Board legal documentation that explains the name change.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

R4-26-414. Complaints and Investigations

- A.** Anyone, including the Board, may file a complaint. A complainant shall ensure that a complaint filed with the Board involves:
1. An individual licensed under this Article; or
 2. An individual, including an applicant, believed to be engaged in the unlicensed practice of behavior analysis.
- B.** Complaint requirements. A complainant shall:
1. Submit the complaint to the Board in writing; and
 2. Provide the following information:
 - a. Name and business address of licensee or other individual who is the subject of complaint;
 - b. Name and address of complainant;
 - c. Allegations constituting unprofessional conduct;
 - d. Details of the complaint with pertinent dates and activities;
 - e. Whether the complainant has contacted any other organization regarding the complaint; and
 - f. Whether the complainant has contacted the licensee or other individual concerning the complaint and if so, the response, if any.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1).

R4-26-415. Informal Interview

- A.** As authorized by A.R.S. § 32-2091.09, the Board may facilitate investigation of a complaint by conducting an informal interview. The Board shall send written notice of an informal interview to the individual who is the subject of the complaint, by personal service or certified mail, return receipt requested, at least 30 days before the informal interview.

- C.** The Board shall ensure that an informal interview proceeds as follows:
1. Introduction of the respondent and, if applicable, the complainant, any other witnesses, and legal counsel for the respondent;
 2. Introduction of the Board members, staff, and Assistant Attorney General present;
 3. Swearing in of the respondent, complainant, and witnesses;
 4. Brief summary of the allegations and purpose of the informal interview;
 5. Optional opening comment by the respondent and complainant;
 6. Questioning of the respondent and witnesses by the Board;
 7. Questioning of the complainant by the respondent through the Chair;
 8. Optional additional comments by the respondent and complainant; and
 9. Deliberation by the Board.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Amended by final rulemaking 26 A.A.R. 1017, effective July 4, 2020 (Supp. 20-2).

R4-26-416. Rehearing or Review of Decision

- A.** The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10.
- B.** Except as provided in subsection (H), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.
- C.** A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- D.** The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings of the Board or any order or abuse of discretion that deprived the moving party of a fair hearing;
 2. Misconduct of the Board, its staff, or an administrative law judge;
 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 hearing;
 5. Excessive or insufficient penalty;

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6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings; and
 7. The findings of fact or a decision is not justified by the evidence or is contrary to law.
- E.** The Board may affirm or modify a decision or grant a rehearing or review to all or some of the parties on all or some of the issues for any of the reasons listed in subsection (D). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds for the order. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.
- F.** Within 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of its decision for any reason it might have granted a rehearing or review on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. An order granting a rehearing or review shall specify with particularity the grounds on which the rehearing or review is granted.
- G.** When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits.
- H.** If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public health, safety, or welfare 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.
- I.** An application for judicial review of any final Board decision may be made under A.R.S. § 12-901 et seq.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

R4-26-417. Licensing Time Frames

- A.** For the purpose of A.R.S. § 41-1073, the Board establishes the following time frames:
1. Initial license.
 - a. Overall time frame: 120 days,
 - b. Administrative completeness review time frame: 20 days, and
 - c. Substantive review time frame: 90 days;
 2. Renewal license.
 - a. Overall time frame: 150 days,
 - b. Administrative completeness review time frame: 60 days, and
 - c. Substantive review time frame: 90 days; and
 3. Initial registration as an out-of-state health care provider of telehealth services.
 - a. Overall time frame: 120 days,
 - b. Administrative completeness review time frame: 30 days, and
 - c. Substantive review time frame: 90 days.
- B.** An applicant and the Executive Director of the Board may agree in writing to extend the substantive review and overall time frames by no more than 25 percent of the overall time frame.
- C.** The administrative completeness review time frame begins when the Board receives the application materials required under R4-26-403, R4-26-408(C) and (D), or as prescribed under A.R.S. § 36-3606. During the administrative completeness review time frame, the Board shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the Board shall specify in the notice what information is missing.
- D.** An applicant whose application is incomplete shall submit the missing information to the Board within 240 days for an initial license. Both the administrative completeness review and overall time frames are suspended from the date of the Board's notice under subsection (C) until the Board receives all of the missing information.
- E.** Upon receipt of all missing information, the Board shall notify the applicant that the application is complete. The Board shall not send a separate notice of completeness if the Board grants or denies a license within the administrative completeness review time frame listed in subsection (A)(1)(b) or (A)(2)(b).
- F.** The substantive review time frame begins on the date of the Board's notice of administrative completeness.
- G.** If the Board determines during the substantive review that additional information is needed, the Board shall send the applicant a comprehensive written request for additional information.
- H.** An applicant who receives a request under subsection (G) shall submit the additional information to the Board within 240 days. Both the substantive review and overall time frames are suspended from the date of the Board's request until the Board receives the additional information.
- I.** An applicant may receive a 30-day extension of the time provided under subsection (D) or (H) by providing written notice to the Board before the time expires. If an applicant fails to submit to the Board the missing or additional information within the time provided under subsection (D) or (H) or the time as extended, the Board shall close the applicant's file. To receive further consideration, a person whose file is closed shall re-apply.
- J.** Within the overall time frame listed in subsection (A), the Board shall:
 1. Grant a license if the Board determines that the applicant meets all criteria required by statute and this Article; or
 2. Deny a license if the Board determines that the applicant does not meet all criteria required by statute and this Article.
- K.** If the Board grants a license under subsection (J)(1), the Board shall send the applicant a notice explaining that the Board shall issue the license only after the applicant pays the license issuance fee specified under R4-26-402 and pro-rated as prescribed under A.R.S. § 32-2091.07(A).
- L.** If the Board denies a license, the Board shall send the applicant a written notice explaining:
 1. The reason for denial, with citations to supporting statutes or rules;
 2. The applicant's right to appeal the denial by filing an appeal under A.R.S. Title 41, Chapter 6, Article 10;
 3. The time for appealing the denial; and
 4. The applicant's right to request an informal settlement conference.
- M.** If a time frame's last day falls on a Saturday, Sunday, or official state holiday, the next business day is the time frame's last day.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Section amended by final rulemaking at 23 A.A.R. 215, effective March 5, 2017 (Supp. 17-1). Amended by final exempt rulemaking at 27 A.A.R. 1272, effective September 1, 2021; % symbol in subsection (B) changed to "percent" to maintain consistency with Chapter style (Supp. 21-3).

R4-26-418. Mandatory Reporting Requirement

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- A. As required by A.R.S. § 32-3208, an applicant or licensee who is charged with a misdemeanor involving conduct that may affect client safety or a felony shall provide written notice of the charge to the Board within 10 days after the charge is filed.
- B. A list of reportable misdemeanors is available on the Board's website.

Historical Note

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

As of January 10, 2022

32-2061. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a valid and existing license to practice psychology.
2. "Adequate records" means records containing, at a minimum, sufficient information to identify the client or patient, the dates of service, the fee for service, the payments for service, the type of service given and copies of any reports that may have been made.
3. "Board" means the state board of psychologist examiners.
4. "Client" means a person or an entity that receives psychological services. A corporate entity, a governmental entity or any other organization may be a client if there is a professional contract to provide services or benefits primarily to an organization rather than to an individual. If an individual has a legal guardian, the legal guardian is the client for decision-making purposes, except that the individual receiving services is the client or patient for:
 - (a) Issues that directly affect the physical or emotional safety of the individual, such as sexual or other exploitative relationships.
 - (b) Issues that the guardian agrees to specifically reserve to the individual.
5. "Committee on behavior analysts" means the committee established by section 32-2091.15.
6. "Exploit" means actions by a psychologist who takes undue advantage of the professional association with a client or patient, a student or a supervisee for the advantage or profit of the psychologist.
7. "Health care institution" means a facility as defined in section 36-401.
8. "Letter of concern" means an advisory letter to notify a psychologist that while there is insufficient evidence to support disciplinary action the board believes the psychologist should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in action against the psychologist's license.
9. "Patient" means a person who receives psychological services. If an individual has a legal guardian, the legal guardian is the client or patient for decision-making purposes, except that the individual receiving services is the client or patient for:
 - (a) Issues that directly affect the physical or emotional safety of the individual, such as sexual or other exploitative relationships.
 - (b) Issues that the guardian agrees to specifically reserve to the individual.
10. "Practice of psychology" means the psychological assessment, diagnosis, treatment or correction of mental, emotional, behavioral or psychological abilities, illnesses or disorders or purporting or attempting to do this consistent with section 32-2076.
11. "Psychologically incompetent" means a person lacking in sufficient psychological knowledge or skills to a degree likely to endanger the health of clients or patients.
12. "Psychological service" means all actions of the psychologist in the practice of psychology.

13. "Psychologist" means a natural person holding a license to practice psychology pursuant to this chapter.

14. "Supervisee" means any person who functions under the extended authority of the psychologist to provide, or while in training to provide, psychological services.

15. "Telepractice" means providing psychological services through interactive audio, video or electronic communication that occurs between the psychologist and the patient or client, including any electronic communication for diagnostic, treatment or consultation purposes in a secure platform, and that meets the requirements of telehealth pursuant to section 36-3602. Telepractice includes supervision.

16. "Unprofessional conduct" includes the following activities whether occurring in this state or elsewhere:

(a) Obtaining a fee by fraud or misrepresentation.

(b) Betraying professional confidences.

(c) Making or using statements of a character tending to deceive or mislead.

(d) Aiding or abetting a person who is not licensed pursuant to this chapter in representing that person as a psychologist.

(e) Gross negligence in the practice of a psychologist.

(f) Sexual intimacies or sexual intercourse with a current client or patient or a supervisee or with a former client or patient within two years after the cessation or termination of treatment. For the purposes of this subdivision, "sexual intercourse" has the same meaning prescribed in section 13-1401.

(g) Engaging or offering to engage as a psychologist in activities that are not congruent with the psychologist's professional education, training and experience.

(h) Failing or refusing to maintain and retain adequate business, financial or professional records pertaining to the psychological services provided to a client or patient.

(i) Commission of a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(j) Making a fraudulent or untrue statement to the board or its investigators, staff or consultants.

(k) Violating any federal or state laws or rules that relate to the practice of psychology or to obtaining a license to practice psychology.

(l) Practicing psychology while impaired or incapacitated to the extent and in a manner that jeopardizes the welfare of the client or patient or renders the psychological services provided ineffective.

(m) Using fraud, misrepresentation or deception to obtain or attempt to obtain a psychology license or to pass or attempt to pass a psychology licensing examination or in assisting another person to do so.

(n) Unprofessional conduct in another jurisdiction that resulted in censure, probation or a civil penalty or in the denial, suspension, restriction or revocation of a certificate or license to practice as a psychologist.

- (o) Providing services that are unnecessary or unsafe or otherwise engaging in activities as a psychologist that are unprofessional by current standards of practice.
- (p) Falsely or fraudulently claiming to have performed a professional service, charging for a service or representing a service as the licensee's own when the licensee has not rendered the service or assumed supervisory responsibility for the service.
- (q) Representing activities or services as being performed under the licensee's supervision if the psychologist has not assumed responsibility for them and has not exercised control, oversight and review.
- (r) Failing to obtain a client's or patient's informed and written consent to release personal or otherwise confidential information to another party unless the release is otherwise authorized by law.
- (s) Failing to make client or patient records in the psychologist's possession promptly available to another psychologist who is licensed pursuant to this chapter on receipt of proper authorization to do so from the client or patient, a minor client's or patient's parent, the client's or patient's legal guardian or the client's or patient's authorized representative or failing to comply with title 12, chapter 13, article 7.1.
- (t) Failing to take reasonable steps to inform or protect a client's or patient's intended victim and inform the proper law enforcement officials in circumstances in which the psychologist becomes aware during the course of providing or supervising psychological services that a client or patient intends or plans to inflict serious bodily harm on another person.
- (u) Failing to take reasonable steps to protect a client or patient in circumstances in which the psychologist becomes aware during the course of providing or supervising psychological services that a client or patient intends or plans to inflict serious bodily harm on self.
- (v) Abandoning or neglecting a client or patient in need of immediate care without making suitable arrangements for continuation of the care.
- (w) Engaging in direct or indirect personal solicitation of clients or patients through the use of coercion, duress, undue influence, compulsion or intimidation practices.
- (x) Engaging in false, deceptive or misleading advertising.
- (y) Exploiting a client or patient, a student or a supervisee.
- (z) Failing to report information to the board regarding a possible act of unprofessional conduct committed by another psychologist who is licensed pursuant to this chapter unless this reporting violates the psychologist's confidential relationship with the client or patient pursuant to section 32-2085. Any psychologist who reports or provides information to the board in good faith is not subject to an action for civil damages. For the purposes of this subdivision, it is not an act of unprofessional conduct if a licensee addresses an ethical conflict in a manner that is consistent with the ethical standards contained in the document entitled "ethical principles of psychologists and code of conduct" as adopted by the American psychological association and in effect at the time the licensee makes the report.
- (aa) Violating a formal board order, consent agreement, term of probation or stipulated agreement issued under this chapter.
- (bb) Failing to furnish information in a timely manner to the board or its investigators or representatives if requested or subpoenaed by the board as prescribed by this chapter.

(cc) Failing to make available to a client or patient or to the client's or patient's designated representative, on written request, a copy of the client's or patient's record, including raw test data, psychometric testing materials and other information as provided by law.

(dd) Violating an ethical standard adopted by the board.

32-2062. Board; qualifications; appointments; terms; compensation; immunity

A. The state board of psychologist examiners is established consisting of ten members appointed by the governor pursuant to section 38-211.

B. Each member of the board shall be a citizen of the United States and a resident of this state at the time of appointment. Seven members shall be licensed pursuant to this chapter, and three shall be public members who are not eligible for licensure. The board shall have at all times, except for the period when a vacancy exists, at least two members who are licensed as psychologists and who are full-time faculty members from universities in this state with a doctoral program in psychology that meets the requirements of section 32-2071, at least three members who are psychologists in professional practice and at least two members who are behavior analysts in professional practice and who are members of the committee on behavior analysts. The public members shall not have a substantial financial interest in the health care industry and shall not have a household member who is eligible for licensure under this chapter.

C. Each member shall serve for a term of five years beginning and ending on the third Monday in January.

D. A vacancy on the board occurring other than by the expiration of term shall be filled by appointment by the governor for the unexpired term as provided in subsection C of this section. The governor, after a hearing, may remove any member of the board for misconduct, incompetency or neglect of duty.

E. Board members shall receive compensation in the amount of one hundred dollars for each cumulative eight hours of actual service in the business of the board and reimbursement of all expenses pursuant to title 38, chapter 4, article 2.

F. Members of the board and its employees, consultants and test examiners are personally immune from suit with respect to all acts done and actions taken in good faith and in furtherance of the purposes of this chapter.

32-2063. Powers and duties

A. The board shall:

1. Administer and enforce this chapter and board rules.
2. Regulate disciplinary actions, the granting, denial, revocation, renewal and suspension of licenses and the rehabilitation of licensees pursuant to this chapter and board rules.
3. Prescribe the forms, content and manner of application for licensure and renewal of licensure and set deadlines for the receipt of materials required by the board.
4. Keep a record of all licensees, board actions taken on all applicants and licensees and the receipt and disbursement of monies.
5. Adopt an official seal for attesting licenses and other official papers and documents.
6. Investigate charges of violations of this chapter and board rules and orders.

7. Subject to title 41, chapter 4, article 4, employ an executive director who serves at the pleasure of the board.

8. Annually elect from among its membership a chairman, a vice chairman and a secretary, who serve at the pleasure of the board.

9. Adopt rules pursuant to title 41, chapter 6 to carry out this chapter and to define unprofessional conduct.

10. Engage in a full exchange of information with other regulatory boards and psychological associations, national psychology organizations and the Arizona psychological association and its components.

11. By rule, adopt a code of ethics relating to the practice of psychology. The board shall base this code on the code of ethics adopted and published by the American psychological association. The board shall apply the code to all board enforcement policies and disciplinary case evaluations and development of licensing examinations.

12. Adopt rules regarding the use of telepractice.

13. Before the board takes action, receive and consider recommendations from the committee on behavior analysts on all matters relating to licensing and regulating behavior analysts, as well as regulatory changes pertaining to the practice of behavior analysis, except in the case of a summary suspension of a license pursuant to section 32-2091.09, subsection E.

14. Beginning January 1, 2022, require each applicant for an initial or temporary license or a license renewal pursuant to this chapter to have applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1. If an applicant is issued a valid fingerprint clearance card, the applicant shall submit the valid fingerprint clearance card to the board with the completed application. If an applicant applies for a fingerprint clearance card and is denied, the applicant may request that the board consider the application for licensure notwithstanding the absence of a valid fingerprint clearance card. The board, in its discretion, may approve an application for licensure despite the denial of a valid fingerprint clearance card if the board determines that the applicant's criminal history information on which the denial is based does not alone disqualify the applicant from licensure.

B. Subject to title 41, chapter 4, article 4, the board may employ personnel it deems necessary to carry out this chapter. The board, in investigating violations of this chapter, may employ investigators who may be psychologists. The board or its executive director may take and hear evidence, administer oaths and affirmations and compel by subpoena the attendance of witnesses and the production of books, papers, records, documents and other information relating to the investigation or hearing.

C. Subject to section 35-149, the board may accept, expend and account for gifts, grants, devises and other contributions, monies or property from any public or private source, including the federal government. The board shall deposit, pursuant to sections 35-146 and 35-147, monies received pursuant to this subsection in special funds for the purpose specified, and monies in these funds are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

D. Compensation for all personnel shall be determined pursuant to section 38-611.

32-2064. Meetings; committees; quorum

A. The board shall hold regular quarterly meetings at a time and place determined by the chairman. The board shall hold special meetings the chairman determines necessary to carry out the functions of the board.

B. The chairman may establish committees from the board membership necessary to carry out the functions of the board. The board may establish committees of licensed psychologists to act as consultants to the board. Members of consultant committees are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

C. A majority of board members constitutes a quorum and a majority vote of a quorum present is necessary for the board to take any action.

32-2065. Board of psychologist examiners fund; separate behavior analyst account

A. The board of psychologist examiners fund is established.

B. Except as provided in section 32-2081 and section 32-2091.09, subsection I, pursuant to sections 35-146 and 35-147, the board shall deposit ten percent of all monies collected pursuant to this chapter in the state general fund and deposit the remaining ninety percent in the board of psychologist examiners fund.

C. All monies deposited in the board of psychologist examiners fund are subject to section 35-143.01.

D. All monies deposited in the board of psychologist examiners fund pursuant to section 32-2067 and any monies received pursuant to section 32-2063, subsection C for psychologist licensing and regulation must be used only for the licensing and regulation of psychologists pursuant to this article and articles 2 and 3 of this chapter and may not be used for the licensing and regulation of behavior analysts pursuant to article 4 of this chapter.

E. All monies deposited in the board of psychologist examiners fund pursuant to article 4 of this chapter and any monies received pursuant to section 32-2063, subsection C for behavior analyst licensing and regulation must be used only for the licensing and regulation of behavior analysts pursuant to article 4 of this chapter and may not be used for the licensing and regulation of psychologists pursuant to this article and articles 2 and 3 of this chapter.

F. The board shall establish a separate account in the fund for monies transferred to the fund pursuant to article 4 of this chapter and any monies received pursuant to section 32-2063, subsection C for behavior analyst licensing and regulation.

32-2066. Directory; change of address; costs; civil penalty

A. The board shall compile and publish on its web site a directory containing:

1. The names and addresses of the officers and members of the board.
2. The names and addresses of all licensees.
3. The current board rules.
4. A copy of this chapter.
5. Additional information the board deems of interest and importance to licensees.

B. A licensee shall inform the board in writing of the licensee's current residence address, office address and telephone number within thirty days of each change in this information. The board may assess the costs incurred by the board in locating a licensee and may assess a civil penalty of not more than one hundred dollars against a licensee who fails to notify the board within thirty days from the date of any change of information required to be reported under this subsection.

32-2067. [Fees; alternative payment methods](#)

A. The board, by a formal vote at its annual fall meeting, may establish fees and penalties that do not exceed:

1. Four hundred dollars for an application for an active license to practice psychology.
2. Two hundred dollars for an application for a temporary license to practice psychology.
3. Two hundred fifty dollars for reapplication for an active license.
4. Five hundred dollars for issuing an initial license. The board shall prorate this fee pursuant to subsection D of this section.
5. Fifty dollars for a duplicate license.
6. Five hundred dollars for biennial renewal of an active license.
7. Eighty-five dollars for biennial renewal of an inactive license.
8. Three hundred dollars for the reinstatement of an active or inactive license.
9. Three hundred fifty dollars for any additional examination.
10. Two hundred fifty dollars for delinquent compliance with continuing education requirements.
11. Five dollars for the sale of a duplicate renewal receipt.
12. Five dollars for the sale of a copy of the board's statutes and rules.
13. Two dollars for verification of a license.
14. Ten dollars for the sale of each audiotape of board meetings.
15. Five cents per name for the sale of computerized discs that contain the name of each licensee.
16. Twenty-five cents per name for the sale of computerized discs that contain the name and address of each licensee.
17. Thirty-five cents per name for the sale of customized computerized discs that contain additional licensee information that is not required by law to remain confidential.
18. Twenty-five cents per page for copying records, documents, letters, minutes, applications, files and policy statements. This fee includes postage.

B. The board may charge additional fees for services the board deems necessary and appropriate to carry out this chapter. These fees shall not exceed the actual cost of providing the service.

C. The board shall not refund fees except as provided in section 32-2073, subsection G. On special request and for good cause the board may return the license renewal fee.

D. The board shall prorate the fee for issuing an initial license by dividing the biennial renewal fee by twenty-four and multiplying that amount by the number of months that remain until the next biennial renewal date.

E. Subject to the requirements of section 41-2544, the executive director may enter into agreements to allow licensees to pay fees by alternative methods, including credit cards, charge cards, debit cards and electronic funds transfers.

32-2071. Qualifications of applicants; education; training

A. An applicant for licensure shall have a doctoral degree from an institution of higher education in clinical or counseling psychology, school or educational psychology or any other subject area in applied psychology acceptable to the board and shall have completed a doctoral program in psychology from an educational institution that has:

1. Been accredited by one of the following regional accrediting agencies at the time of the applicant's graduation:

- (a) The New England association of schools and colleges.
- (b) The middle states association of colleges and schools.
- (c) The north central association of colleges and schools.
- (d) The northwest association of schools and colleges.
- (e) The southern association of colleges and schools.
- (f) The western association of schools and colleges.

2. A program that is identified and labeled as a psychology program and that stands as a recognized, coherent organizational entity within the institution with clearly identified entry and exit criteria for graduate students in the program.

3. An identifiable psychology faculty in the area of health service delivery and a psychologist responsible for the program.

4. A core program that requires each student to demonstrate competence by passing suitable comprehensive examinations or by successfully completing at least three or more graduate semester hours, five or more quarter hours or six or more trimester hours or by other suitable means in the following content areas:

- (a) Scientific and professional ethics and standards in psychology.
- (b) Research, which may include design, methodology, statistics and psychometrics.
- (c) The biological basis of behavior, which may include physiological psychology, comparative psychology, neuropsychology, sensation and perception and psychopharmacology.
- (d) The cognitive-affective basis of behavior, which may include learning, thinking, motivation and emotion.
- (e) The social basis of behavior, which may include social psychology, group processes, cultural diversity and organizational and systems theory.
- (f) Individual differences, which may include personality theory, human development and abnormal psychology.

(g) Assessment, which includes instruction in interviewing and administering, scoring and interpreting psychological test batteries to diagnose cognitive abilities and personality functioning.

(h) Treatment modalities, which include instruction in the theory and application of a diverse range of psychological interventions to treat mental, emotional, psychological and behavioral disorders.

5. A psychology program that leads to a doctoral degree requiring at least the equivalent of three full-time academic years of graduate study, two years of which are at the institution from which the doctoral degree is granted.

6. A requirement that the student must successfully defend a dissertation, the content of which is primarily psychological, or an equivalent project acceptable to the board.

7. Official transcripts that have been prepared solely by the institution and not by the student and, except for manifest clerical errors or grade changes, have not been altered by the institution after the student's graduation.

8. Given the student credit only for coursework that is listed on its official transcripts and that is obtained only at regionally accredited educational institutions as listed in paragraph 1 of this subsection and does not give credit for continuing education experiences or courses.

B. If the institution is located outside the United States, the applicant shall demonstrate that the program meets the requirements of subsection A, paragraphs 2 through 7 and subsections C through M of this section.

C. The applicant shall complete relevant didactic courses of the program required under subsection A, paragraph 4 of this section before starting the supervised professional experiences as described pursuant to subsection F of this section.

D. Each applicant for licensure shall obtain three thousand hours of supervised professional work experiences. The applicant shall demonstrate clearly how the applicant met this requirement. The applicant shall obtain a minimum of one thousand five hundred hours through an internship as described in subsection F of this section. The applicant shall obtain the remaining one thousand five hundred hours through any combination of the following:

1. Supervised preinternship professional experiences as described in subsection E of this section.
2. Additional internship hours as described in subsection F of this section.
3. Supervised postdoctoral experiences as described in subsection G of this section.

E. If the applicant chooses to include up to one thousand five hundred hours of supervised preinternship professional experience to satisfy a portion of the three thousand hours of supervised professional experience, the following requirements must be met:

1. The applicant's supervised preinternship professional experiences shall reflect a faculty directed, organized, sequential series of supervised experiences of increasing complexity that follows appropriate academic coursework and that prepares the applicant for an internship.
2. The applicant's supervised preinternship professional experiences shall follow appropriate academic preparation. There must be a written training plan between the student and the graduate training program. The training plan for each supervised preinternship professional experience training site must designate an allotment of time for each training activity and must ensure the quality, breadth and depth of training experience by specifying goals and objectives of the supervised preinternship professional

experience, the methods of evaluation of the student and supervisory experiences. If supervision is to be completed by qualified site supervisors at external sites, their approval must be included in the plan.

3. More than one part-time supervised preinternship professional experience placement of appropriate scope and complexity over the course of the graduate training may be combined to satisfy the one thousand five hundred hours of supervised preinternship professional experiences.

4. Every twenty hours of supervised preinternship professional experience must include the following:

(a) At least fifty percent of the supervised preinternship professional experiences must be in psychological service-related activities. Psychological service-related activities may include treatment, assessment, interviews, report writing, case presentations, seminars on applied issues providing cotherapy, group supervision and consultations.

(b) At least twenty-five percent of the supervised preinternship professional experiences must be devoted to face-to-face patient-client contact.

(c) At least one hour per week of regularly scheduled contemporaneous in-person individual supervision per twenty hours of supervised preinternship professional experience that addresses the direct psychological services provided by the student.

(d) At least two hours of regularly scheduled contemporaneous supervision per twenty hours of supervised preinternship professional experience that addresses the direct psychological services provided by the student. At least fifty percent of the supervision during the total supervised preinternship professional experience shall be provided through contemporaneous in-person individual supervision. Not more than fifty percent shall be through in-person group supervision. At least seventy-five percent of the supervision shall be by a psychologist who is licensed or certified to practice psychology at the independent level by a licensing jurisdiction of the United States or Canada and who is designated by the academic program. Not more than twenty-five percent of the supervision shall be by a licensed mental health professional who is licensed or certified by a licensing jurisdiction of the United States or Canada, a psychology intern currently under the supervision of a licensed psychologist or an individual completing a postdoctoral supervised experience currently under the supervision of a licensed psychologist.

5. The applicant must provide to the board the written training plan developed by the applicant's program and documentation of the total hours accrued by the applicant during the supervised preinternship professional experience, including the number of face-to-face patient-client contact hours and the amount of supervision and qualifications of the supervisors for the entire supervised preinternship professional experiences. Documentation must include an acknowledgement that ethics training was included throughout the supervised preinternship professional experience.

6. Supervised professional preinternship experiences must be completed within seventy-two months.

F. The applicant shall have one thousand five hundred hours of supervised professional experience, which shall be either an internship that is approved by the American psychological association committee on accreditation, an internship that is a member of the association of psychology postdoctoral and internship centers or an organized training program that is designed to provide the trainee with a planned, programmed sequence of training experience, the focus and purpose of which are to ensure breadth and quality of training, and that meets the following requirements:

1. The training program has a clearly designated staff psychologist who is responsible for the integrity and quality of the training and who is licensed or certified to practice psychology at the independent level by any licensing jurisdiction of the United States or Canada in which the program exists.

2. The training program provides at least two psychologists on staff as supervisors, at least one of whom is licensed or certified to practice psychology at the independent level by a licensing jurisdiction of the United States or Canada in which the program exists and at least one of whom is directly available to the trainee in case of emergency.
3. Supervision is provided by the person who carries clinical responsibility for the cases being supervised. At least half of the training supervision shall be provided by one or more psychologists.
4. Training includes a range of assessment, consultation and treatment activities conducted directly with clients or patients.
5. A minimum of twenty-five percent of a trainee's supervised professional experience hours is in direct client or patient contact.
6. Training includes regular in-person, individual supervision conducted on a contemporaneous basis, with a minimum of one hour of in-person, individual supervision for each twenty hours of experience and with the specific intent of dealing with psychological services rendered directly by the trainee and at least two additional hours per week in other learning activities. The supervisor shall ensure that the telepractice supervision is conducted using secure, confidential real-time visual telecommunication.
7. The training program includes interaction with other psychology trainees.
8. Trainees have a title that designates their trainee status.
9. The applicant provides from the training organization a written statement that describes the goals and content of the training program and documents that clear expectations existed for the breadth, depth and quality and quantity of a trainee's work at the time of the supervised professional experience.
10. The supervised professional experience is completed within twenty-four consecutive months.

G. Not more than one thousand five hundred hours of supervised professional experience shall be postdoctoral and may start on written certification by the applicant's education program that the applicant has satisfied all requirements for the doctoral degree and on written certification that the applicant has completed an appropriate supervised professional experience as required in subsection F of this section. The applicant may complete more than one thousand five hundred hours of a supervised postdoctoral experience, but not more than one thousand five hundred hours may count towards the requirements of this subsection. The one thousand five hundred hours of supervised professional experience shall meet the following requirements:

1. Supervision is conducted by a psychologist who is licensed or certified to practice psychology at the independent level in any licensing jurisdiction of the United States or Canada in which the supervision occurs or by a psychologist who is on full-time active duty in the United States armed services and who is licensed or certified by a board of psychologist examiners in a United States jurisdiction, who has been licensed or certified for at least two years and who is competent in the areas of professional practice in which the supervisee is receiving supervised professional experience.
2. The supervisor takes full legal responsibility for the welfare of the client or patient as well as the diagnosis, intervention and outcome of the intervention and takes reasonable steps to ensure that clients or patients are informed of the supervisee's training and status and that clients or patients may meet with the supervisor at the client's or patient's request.

3. The supervisor or the appropriate custodian of records is responsible for ensuring that adequate records of client or patient contacts are maintained and that the client or patient is informed that the source of access to this information in the future is the supervisor.

4. The supervisor is fully available for consultation in the event of an emergency and provides emergency consultation coverage for the supervisee.

5. Regular in-person, individual supervision is conducted on a contemporaneous basis, with a minimum of one hour of in-person, individual supervision for each twenty hours of supervised professional experience. At least forty percent of the supervisee's time shall be in direct contact with clients or patients. The supervisor shall ensure that the telepractice supervision is conducted using secure, confidential real-time visual telecommunication technology.

6. The supervised professional experience as described in this subsection is completed within thirty-six consecutive months.

7. The applicant provides from the training organization a written training plan that describes the goals and content of the training experience and documents that clear expectations existed for the breadth, depth and quality and quantity of a trainee's work at the time of the supervised professional experience.

H. In meeting the supervised preinternship professional experience as described in subsection E of this section and the supervised professional experience as described in subsections F and G of this section, an applicant shall not receive credit for more than forty hours of experience per week.

I. An applicant who does not satisfy the supervised professional experience requirements of subsection F of this section may qualify on demonstration of twenty years' licensed or certified practice as a psychologist in a jurisdiction of the United States or Canada.

J. An applicant who does not satisfy the supervised preinternship professional experience requirements of subsection E of this section or the supervised professional experience requirements of subsection G of this section, or a combination of subsections E and G of this section, may qualify on demonstration of ten years' licensed or certified practice as a psychologist in a jurisdiction of the United States or Canada.

K. The applicant shall complete a residency at the institution that awarded the applicant's doctoral degree. The residency shall require the following:

1. The student's active participation and involvement in learning.

2. Direct regular contact with faculty and other matriculated doctoral students.

3. Eighteen semester hours or thirty quarter hours or thirty-six trimester hours completed within a twelve-month consecutive period at the institution or a minimum of three hundred hours of student-faculty contact that involves face-to-face educational meetings conducted by the institution's psychology faculty and fully documented by the institution and the student. These meetings shall include interaction between the student and faculty and the student and other students and shall relate to the program content areas specified in subsection A, paragraph 4 of this section. These meetings shall be in addition to the supervised preinternship professional experience, clerkship or externship supervision hours or dissertation hours. On request by the board, the applicant shall obtain documentation from the institution showing how the applicant's performance was assessed and documented.

L. To determine whether an applicant satisfies the requirements of subsection A of this section relating to subject areas in applied psychology, the board may require the applicant to complete a respecialization program in a program or professional school of psychology that has either an established American

psychological association accredited doctoral program in clinical or counseling psychology or school or educational psychology or an established doctoral program that meets board rules. The applicant must also:

1. Meet all of the requirements of the new respecialization area. The board shall give the applicant credit for coursework that the applicant has previously successfully completed and that meets the requirements of subsection A, paragraph 4 of this section.
2. Complete one thousand five hundred hours of supervised professional experience as prescribed in subsection F of this section.
3. Present a certificate or letter from the department head, training director or dean that verifies that the applicant completed the program and that identifies the specialty area of applied psychology the applicant completed.

M. For the purposes of subsection A, paragraph 4 of this section, "other suitable means" means that an applicant demonstrates competence by being a diplomate of the American board of professional psychology or, if an applicant fails to demonstrate completion of coursework in two content areas prescribed in subsection A, paragraph 4 of this section, the applicant has fulfilled the two deficient requirements by successfully passing a graduate course in each deficient content area as a nonmatriculated student in a doctoral level psychology program at a university that is accredited pursuant to subsection A, paragraph 1 of this section.

32-2071.01. Requirements for licensure; remediation; credentials

A. An applicant for licensure shall demonstrate to the board's satisfaction that the applicant:

1. Has met the education and training qualifications for licensure prescribed in section 32-2071 or subsection D of this section.
2. Has passed any examination or examinations required by section 32-2072.
3. Has a professional record that indicates that the applicant has not committed any act or engaged in any conduct that constitutes grounds for disciplinary action against a licensee pursuant to this chapter.
4. Has not had a license or a certificate to practice psychology refused, revoked, suspended or restricted by a state, territory, district or country for reasons that relate to unprofessional conduct.
5. Has not voluntarily surrendered a license in another regulatory jurisdiction in the United States or Canada while under investigation for conduct that relates to unprofessional conduct.
6. Does not have a complaint, allegation or investigation pending before another regulatory jurisdiction in the United States or Canada that relates to unprofessional conduct.
7. Beginning January 1, 2022, has applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

B. If the board finds that an applicant committed an act or engaged in conduct that would constitute grounds for disciplinary action in this state, or if the board or any jurisdiction has taken disciplinary action against an applicant, the board may issue a license if the board first determines to its satisfaction that the act or conduct has been corrected, monitored or resolved. If the act or conduct has not been resolved before issuing a license, the board must determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

C. An applicant for licensure meets the requirements of section 32-2071, subsection A, paragraphs 1, 2, 3, 4, 5, 6 and 8 if the applicant earned a doctoral degree from a program that was accredited by the American psychological association, office of program consultation and accreditation, or the psychological clinical science accreditation system at the time of graduation.

D. An applicant for licensure who is licensed to practice psychology at the independent level in another licensing jurisdiction of the United States or Canada meets the requirements of subsection A, paragraph 1 of this section if the applicant meets any of the following requirements:

1. Holds a certificate of professional qualification in psychology in good standing issued by the association of state and provincial psychology boards or its successor.
2. Is currently credentialed by the national register of health service providers in psychology or its successor and submits evidence of having practiced psychology independently at the doctoral level for a minimum of five years.
3. Is a diplomate of the American board of professional psychology.

32-2072. Examinations; exemptions

A. An applicant for licensure must pass the examination for professional practice in psychology, which is the national examination established by the association of state and provincial psychology boards. An applicant is considered to have passed the national examination if the applicant's score equals or exceeds either:

1. Seventy per cent on the written examination.
2. A scaled score of five hundred on the computer-based examination.

B. The board may implement an additional examination for all applicants to cover areas of professional ethics and practice consistent with the applicant's education and experience, state law relating to the practice of psychology or other areas the board determines are suitable.

C. An applicant may not take an examination administered for or by the board until the applicant completes the education requirements of this article. The board may approve an applicant who has obtained a doctoral degree in psychology as required under section 32-2071 to take the national examination before completing the experience requirements of this article. Except as provided in subsection D of this section, an applicant may not take an additional board examination until the applicant passes the national examination. An applicant who fails the national examination administered for or by any jurisdiction three times is not eligible to take that examination again until the applicant meets additional requirements prescribed by the board.

D. An applicant is exempt from taking the national examination administered pursuant to this section if the applicant either:

1. Is a diplomate of the American board of professional psychology.
2. Holds a certificate of professional qualification in psychology in good standing issued by the association of state and provincial psychology boards or its successor.

32-2073. Temporary licenses; inactive status; reinstatement to active status

A. If the board requires an additional examination, it may issue a temporary license to a psychologist licensed or certified under the laws of another jurisdiction, if the psychologist applies to the board for licensure and meets the educational, experience and first examination requirements of this article.

B. The board may issue a temporary license to an individual who submits an application for temporary licensure, who is working under supervision for postdoctoral experience and who meets the requirements of section 32-2071, subsections A, B, C and D, as applicable. The individual's postdoctoral experience must meet the requirements of section 32-2071, subsection G. The applicant shall submit the written training plan for the supervised professional experience required in section 32-2071, subsection G, paragraph 7 as part of the application for the temporary license.

C. A temporary license issued pursuant to subsection A of this section is effective from the date that the application is approved until the last day of the month in which the applicant receives the results of the additional examination as provided in section 32-2072.

D. A temporary license issued pursuant to subsection A of this section shall not be extended, renewed, reissued or allowed to continue in effect beyond the period authorized by this section.

E. A temporary license issued pursuant to subsection B of this section is effective for thirty-six months after the date the application is approved and is subject to an initial license fee pursuant to section 32-2067, subsection A, paragraph 4. A temporary license is not subject to renewal.

F. Denial of an application for licensure terminates a temporary license.

G. The board may place on inactive status and waive the license renewal fee requirements for a person who is temporarily or permanently unable to practice as a psychologist due to physical or mental incapacity or disability. An initial request for the waiver of renewal fees shall be accompanied by the renewal fee for an active license, which the board shall return if the waiver is granted. The board shall judge each request for the waiver of renewal fees on its own merits and may seek the verification it deems necessary to substantiate the facts of the situation. A psychologist who is retired is exempt from paying the renewal fee. A psychologist may request voluntary inactive status by submitting to the board an application on a form prescribed by the board and an affirmation that the psychologist shall not practice as a psychologist in this state for the duration of the voluntary inactive status and paying the required fee.

H. A psychologist who is on any form of inactive status shall renew the inactive status every two years by submitting a renewal form provided by the board and paying any applicable fee. A notice to renew is fully effective by mailing the renewal application to the licensee's last known address of record in the board's file. Notice is complete at the time of its deposit in the mail. A psychologist on inactive status due to physical or mental incapacity or disability or retirement shall use the term "inactive" to describe the person's status and shall not practice as a psychologist.

I. A psychologist on inactive status may request reinstatement of the license to active status by applying to the board. The board shall determine whether the person has been or is in violation of any provisions of this chapter and whether the person has maintained and updated the person's professional knowledge and capability to practice as a psychologist. The board may require the person to take or retake the licensure examinations and may require other knowledge or skill training experiences. If approved for active status, the person shall pay a renewal fee that equals the renewal fee for the license to be reinstated.

J. Beginning January 1, 2022, an applicant for a temporary license pursuant to this section shall have applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

[32-2074. Active license; issuance; renewal; expiration; continuing education; cancellation of active license](#)

A. If the applicant satisfies all of the requirements for licensure pursuant to this chapter, the board shall issue an active license and shall prorate the fee for issuing that license for the period remaining until the last day of the birth month of the applicant of the next odd-numbered year or even-numbered year pursuant to subsection B, paragraph 1 or 2 of this section.

B. Except as provided in section 32-4301, a person holding an active or an inactive license shall apply to renew the license on or before the last day of the birth month of the licensee every other year as follows:

1. In each odd-numbered year, if the licensee holds an odd-numbered license.
2. In each even-numbered year, if the licensee holds an even-numbered license.

C. The application shall include any applicable renewal fee. Except as provided in section 32-4301 or 41-1092.11, a license expires if the licensee fails to renew the license on or before the last day of the licensee's birth month of the licensee's renewal year pursuant to subsection B of this section. A licensee may reinstate an expired license by paying a reinstatement fee within two months after the last day of the licensee's birth month in that year. Beginning two months after the last day of the licensee's birth month during the licensee's renewal year until the last day of the licensee's birth month the following year, a licensee may reinstate the license by paying a reinstatement fee and providing proof of competency and qualifications to the board. This proof may include continuing education, an oral examination, a written examination or an interview with the board. A licensee whose license is not reinstated within a year after the last day of the licensee's birth month of the licensee's renewal year may reapply for licensure as prescribed by this chapter. A notice to renew is fully effective by mailing or electronically providing the notice to the licensee's last known address of record or last known email address of record in the board's file. Notice is complete at the time of deposit in the mail or when the email is sent.

D. A person renewing a license shall attach to the completed renewal form a report of disciplinary actions or restrictions placed against the license by another state licensing or disciplinary board or disciplinary actions or sanctions imposed by a state or national psychology ethics committee or health care institution. The report shall include the name and address of the sanctioning agency or health care institution, the nature of the action taken and a general statement of the charges leading to the action.

E. A person who renews an active license to practice psychology in this state shall satisfy a continuing education requirement designed to provide the necessary understanding of current developments, skills, procedures or treatment related to the practice of psychology in the amount and during the period the board prescribes. The board shall prescribe documentation requirements.

F. On request of an active licensee, the board may cancel the license if the licensee is not presently under investigation by the board and the board has not initiated any disciplinary proceeding against the licensee.

G. A person who applies for an initial renewal of a license pursuant to this section on or after January 1, 2022 shall possess or have applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

32-2075. Exemptions from licensure

A. This chapter does not limit the activities, services and use of a title by the following:

1. A school psychologist employed in a common school, high school or charter school setting and certified to use that title by the department of education if the services or activities are a part of the duties of that person's common school, high school or charter school employment.

2. An employee of a government agency in a subdoctorate position who uses the word "assistant" or "associate" after the title and is supervised by a doctorate position employee who is licensed as a psychologist, including a temporary licensee.
 3. A student of psychology pursuing an official course of graduate study at an educational institution accredited as provided in section 32-2071, if after the title the word "trainee", "intern" or "extern" appears and the student uses the title only in conjunction with activities and services that are a part of the supervised program.
 4. A person who resides outside of this state and who is currently licensed or certified to practice psychology at the independent level by a licensing jurisdiction of the United States or Canada if the activities and services conducted in this state are within the psychologist's customary area of practice, do not exceed twenty days per year and are not otherwise in violation of this chapter and the client or patient, public or consumer is informed of the limited nature of these activities and services and that the psychologist is not licensed in this state. A person may exceed the twenty-day limitation requirement of this paragraph to assist in public service that is related to a disaster as acknowledged by the board.
 5. A person in the employ of Arizona state university, northern Arizona university, the university of Arizona or another regionally accredited university in this state or other institutional services if the services are a part of the faculty duties of that person's salaried position, with the exception of faculty providing direct services or faculty providing supervision of students providing direct services, and the person has received a doctoral degree as provided in section 32-2071.
 6. A supervisee who is pursuing a supervised professional experience pursuant to section 32-2071, subsection G if the services or activities are provided under the direct supervision of a licensed psychologist who is licensed or certified for at least two years and who is competent in the areas of professional practice in which the supervisee is receiving supervised professional experience, clients or patients are informed of the training nature of the services provided and the supervisee has a title that designates that person's training status.
- B. This chapter does not prevent a member of other recognized professions that are licensed, certified or regulated under the laws of this state from rendering services within that person's scope of practice and code of ethics if that person does not claim to be a psychologist.

32-2076. Unauthorized practice of medicine

This chapter does not authorize a person to engage in any manner in the practice of medicine pursuant to chapter 13, 17 or 29 of this title, except that a person licensed as provided in this chapter may diagnose, treat and correct human conditions ordinarily within the scope of the practice of a psychologist.

32-2081. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements; civil penalty

- A. The board, on its own motion, may investigate evidence that appears to show that a psychologist is psychologically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of psychology. A health care institution shall, and any other person may, report to the board information that appears to show that a psychologist is psychologically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of psychology.
- B. The board shall not consider a complaint against a psychologist arising out of a judicially ordered evaluation, treatment or psychoeducation of a person charged with violating any provision of title 13, chapter 14 to present a charge of unprofessional conduct unless the court ordering the evaluation has found a substantial basis to refer the complaint for consideration by the board.

C. A claim of unprofessional conduct brought on or after July 3, 2015 against a psychologist arising out of court-ordered services shall be independently reviewed by three members of the board, including a public member. Each of the three board members who are reviewing the claim shall independently provide the board's executive director a recommendation indicating whether the member believes there is merit to open an investigation. If one or more of the board members who are reviewing the claim determine that there is merit to open an investigation as a complaint, an investigation shall be opened and shall follow the complaint process pursuant to this article.

D. The board may not consider a complaint for administrative action if the complaint is filed against a person who is a licensed psychologist and who is a member of the board or a staff member of the board or who is acting as an agent of or consultant to the board if the complaint relates to the person's performance of board duties.

E. The board shall notify the psychologist about whom information has been received as to the content of the information within one hundred twenty days after receiving the information. A person who reports or provides information to the board in good faith is not subject to an action for civil damages. The board, if requested, shall not disclose the name of the person providing information unless this information is essential to proceedings conducted pursuant to this section. The board shall report a health care institution that fails to report as required by this section to the institution's licensing agency.

F. A health care institution shall inform the board if the privileges of a psychologist to practice in that institution are denied, revoked, suspended or limited because of actions by the psychologist that appear to show that that person is psychologically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of psychology, along with a general statement of the reasons that led the health care institution to take this action. A health care institution shall inform the board if a psychologist under investigation resigns the psychologist's privileges or if a psychologist resigns in lieu of disciplinary action by the health care institution. Notification shall include a general statement of the reasons for the resignation.

G. The board may require the licensee to undergo any combination of mental, physical or psychological competence examinations at the licensee's expense and shall conduct investigations necessary to determine the competence and conduct of the licensee.

H. The chairperson of the board shall appoint a complaint screening committee of not less than three members of the board, including a public member. The complaint screening committee is subject to open meeting requirements pursuant to title 38, chapter 3, article 3.1. Except as provided in subsection I of this section, the complaint screening committee shall review all complaints and, based on the information provided pursuant to subsection A or F of this section, may take either of the following actions:

1. Dismiss the complaint if the committee determines that there is no evidence of a violation of law or community standards of practice. Complaints dismissed by the complaint screening committee shall not be disclosed in response to a telephone inquiry or placed on the board's website.

2. Refer the complaint to the full board for further review and action.

I. If the board finds, based on the information it receives under subsection A or F of this section, that the public health, safety or welfare requires emergency action, the board may order a summary suspension of a license pending proceedings for revocation or other action. If the board issues this order, it shall serve the licensee with a written notice of complaint and formal hearing pursuant to title 41, chapter 6, article 10, setting forth the charges made against the licensee and the licensee's right to a formal hearing before the board or an administrative law judge within sixty days.

J. If the board finds that the information provided pursuant to subsection A or F of this section is not of sufficient seriousness to merit direct action against the licensee, it may take any of the following actions:

1. Dismiss if the board believes there is no evidence of a violation of law or community standards of practice.
2. File a letter of concern.
3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

K. If the board believes the information provided pursuant to subsection A or F of this section is or may be true, the board may request an informal interview with the psychologist. If the licensee refuses to be interviewed or if pursuant to an interview the board determines that cause may exist to revoke or suspend the license, the board shall issue a formal complaint and hold a hearing pursuant to title 41, chapter 6, article 10. If as a result of an informal interview or a hearing the board determines that the facts do not warrant revocation or suspension of the license, the board may take any of the following actions:

1. Dismiss if the board believes there is no evidence of a violation of law or community standards of practice.
2. File a letter of concern.
3. Issue a decree of censure.
4. Fix a period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the psychologist. Probation may include temporary suspension for a period of not more than twelve months, restriction of the license or restitution of fees to a client or patient resulting from violations of this chapter. If a licensee fails to comply with a term of probation, the board may file a complaint and notice of hearing pursuant to title 41, chapter 6, article 10 and take further disciplinary action.
5. Enter into an agreement with the licensee to restrict or limit the licensee's practice or activities in order to rehabilitate the psychologist, protect the public and ensure the psychologist's ability to safely engage in the practice of psychology.
6. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

L. If the board finds that the information provided pursuant to subsection A or F of this section warrants suspension or revocation of a license, the board shall hold a hearing pursuant to title 41, chapter 6, article 10. Notice of a complaint and hearing is fully effective by mailing a true copy to the licensee's last known address of record in the board's files. Notice is complete at the time of its deposit in the mail.

M. The board may impose a civil penalty of at least \$300 but not more than \$3,000 for each violation of this chapter or a rule adopted under this chapter. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it collects from civil penalties pursuant to this subsection in the state general fund.

N. If the board determines after a hearing that a licensee has committed an act of unprofessional conduct, is mentally or physically unable to safely engage in the practice of psychology or is psychologically

incompetent, it may do any of the following in any combination and for any period of time it determines necessary:

1. Suspend or revoke the license.
2. Censure the licensee.
3. Place the licensee on probation.

O. A licensee may submit a written response to the board within thirty days after receiving a letter of concern. The response is a public document and shall be placed in the licensee's file.

P. A letter of concern is a public document and may be used in future disciplinary actions against a psychologist. A decree of censure is an official action against the psychologist's license and may include a requirement that the licensee return fees to a client or patient.

Q. Except as provided in section 41-1092.08, subsection H or for a decision made pursuant to subsection C of this section, a person may appeal a final decision made pursuant to this section to the superior court pursuant to title 12, chapter 7, article 6.

R. If during the course of an investigation the board determines that a criminal violation may have occurred involving the delivery of psychological services, it shall inform the appropriate criminal justice agency.

S. If the board finds that it can take rehabilitative or disciplinary action at any time during the investigative or disciplinary process, the board may enter into a consent agreement with the psychologist to limit or restrict the psychologist's practice or to rehabilitate the psychologist in order to protect the public and ensure the psychologist's ability to safely engage in the practice of psychology. The board may also require the psychologist to successfully complete a board-approved rehabilitative, retraining or assessment program at the psychologist's expense.

T. A psychologist who conducts an independent psychological examination pursuant to section 23-1026 is not subject to a complaint of unprofessional conduct unless the complaint alleges unprofessional conduct based on an act other than a disagreement with the findings and opinions expressed by the psychologist as a result of the examination.

32-2082. Right to examine and copy evidence; subpoenas; right to counsel; appeal

A. In connection with an investigation conducted pursuant to this chapter, at all reasonable times the board and its authorized agents may examine and copy documents, reports, records and other physical evidence wherever located relating to the licensee's professional competence, unprofessional conduct or mental or physical ability to safely practice psychology.

B. The board and its authorized agents may issue subpoenas to compel the attendance and testimony of witnesses and the production of documents and other physical evidence as prescribed in subsection A of this section. The board may petition the superior court to enforce a subpoena.

C. Within five days of receiving a subpoena, a person may petition the board to revoke, limit or modify the subpoena. The board shall take this action if it determines that the evidence demanded is not relevant to the investigation. The person may petition the superior court for this relief without first petitioning the board.

D. A person appearing before the board or its authorized agents may be represented by an attorney.

E. Documents associated with an investigation are not open to the public and shall remain confidential. No documents may be released without a court order compelling their production.

F. Nothing in this section or any other provision of law making communications between a psychologist and client or patient privileged applies to an investigation conducted pursuant to this chapter. The board, its employees and its agents shall keep in confidence the names of clients or patients whose records are reviewed during an investigation.

32-2083. Injunction

A. The board may petition the superior court for an order to enjoin the following:

1. A person not licensed pursuant to this chapter from practicing psychology.
2. The activities of a licensee that are an immediate threat to the public.
3. Criminal activities.

B. If the board seeks an injunction to stop the unlicensed practice of psychology, it is sufficient to charge that the respondent on a certain day in a specific county engaged in the practice of psychology without a license and without being exempt from the licensure requirements of this chapter. It is not necessary to show specific damages or injury.

C. The issuance of an injunction does not limit the board's authority to take other action against a licensee pursuant to this chapter.

32-2084. Violations; classification

A. It is a class 2 misdemeanor for a person not licensed pursuant to this chapter to engage in the practice of psychology.

B. It is a class 2 misdemeanor for any person to:

1. Secure a license to practice psychology pursuant to this chapter by fraud or deceit.
2. Impersonate a member of the board in order to issue a license to practice psychology.

C. It is a class 2 misdemeanor for a person not licensed pursuant to this chapter to:

1. Use the designation "psychology", "psychological" or "psychologist".
2. Use any combination of words, initials and symbols that leads the public to believe the person is licensed to practice psychology in this state.

D. It is a class 2 misdemeanor for a person not licensed or not exempt from licensure pursuant to this chapter to use the designation "psychotherapist" or other derivation of the root word "psycho"

32-2085. Confidential communications

A. The confidential relations and communication between a client or patient and a psychologist licensed pursuant to this chapter, including temporary licensees, are placed on the same basis as those provided by law between an attorney and client. Unless the client or patient waives the psychologist-client privilege in writing or in court testimony, a psychologist shall not voluntarily or involuntarily divulge information that is received by reason of the confidential nature of the psychologist's practice. The psychologist shall divulge to the board information it requires in connection with any investigation, public hearing or other

proceeding. The psychologist-client privilege does not extend to cases in which the psychologist has a duty to report information as required by law.

B. The psychologist shall ensure that client or patient records and communications are treated by clerical and paraprofessional staff at the same level of confidentiality and privilege required of the psychologist.

32-2086. Treatment and rehabilitation program

A. The board may establish a confidential program for the treatment and rehabilitation of psychologists who are impaired. The treatment and rehabilitation may include education, intervention, therapeutic treatment and posttreatment monitoring and support. The licensee is responsible for the costs associated with the treatment and rehabilitation, including monitoring.

B. The board may contract with other organizations to operate the program established pursuant to subsection A of this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.
2. Release to the board on demand of all treatment records.
3. Quarterly reports to the board regarding each psychologist's diagnosis, prognosis and recommendations for continuing care, treatment and supervision.
4. Immediate reporting to the board of the name of an impaired psychologist whom the treating organization believes to be a danger to the public or to the psychologist.
5. Reports to the board, as soon as possible, of the name of a psychologist who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.

C. The board may allocate an amount of not more than twenty dollars from each fee it collects from the biennial renewal of active licenses pursuant to section 32-2067 for the operation of the program established by this section.

D. A psychologist who is impaired and who does not agree to enter into a stipulated order with the board shall be placed on probation or shall be subject to other action as provided by law.

E. In order to determine that a psychologist who has been placed on a probation order or who has entered into a stipulation order pursuant to this section is not impaired by alcohol or illegal substances after that order is no longer in effect, the board or its designee may require the psychologist to submit to bodily fluid examinations and other examinations known to detect the presence of alcohol or illegal substances at any time within the five consecutive years following termination of the probationary or stipulated order.

F. A psychologist who is impaired by alcohol or illegal substances and who was under a board stipulation or probationary order that is no longer in effect must ask the board to place the psychologist's license on inactive status with cause. If the psychologist fails to do this, the board shall summarily suspend the license pursuant to section 32-2081. In order to reactivate the license the psychologist must successfully complete a board approved long-term care residential treatment program, an inpatient hospital treatment program or an intensive outpatient treatment program and shall meet the requirements of section 32-2074. After the psychologist completes treatment the board shall determine if it should reactivate the license without restrictions or refer the matter to a formal hearing for the purpose of suspending or revoking the license or to place the psychologist on probation with restrictions necessary to ensure the public's safety.

G. The board may revoke the license of a psychologist if that psychologist is impaired by alcohol or illegal substances and was previously placed on probation pursuant to subsection F of this section. If the licensee is no longer on probation, the board may accept the surrender of the license if the psychologist admits in writing to being impaired by alcohol or illegal substances.

H. An evaluator, treatment provider, teacher, supervisor or volunteer in the board's substance abuse treatment and rehabilitation program who acts in good faith within the scope of that program is not subject to civil liability, including malpractice liability, for the actions of a psychologist who is attending the program pursuant to board action.

32-2087. Psychology interjurisdictional compact

ARTICLE I

PURPOSE

Whereas, states license psychologists in order to protect the public through verification of education, training and experience and to ensure accountability for professional practice; and

Whereas, this compact is intended to regulate the day-to-day practice of telepsychology, which is the provision of psychological services using telecommunication technologies, by psychologists across state boundaries in the performance of their psychological practice as assigned by an appropriate authority; and

Whereas, this compact is intended to regulate the temporary in-person, face-to-face practice of psychology by psychologists across state boundaries for thirty days within a calendar year in the performance of their psychological practice as assigned by an appropriate authority;

Whereas, this compact is intended to authorize state psychology regulatory authorities to afford legal recognition, in a manner consistent with the terms of the compact, to psychologists licensed in another state;

Whereas, this compact recognizes that states have a vested interest in protecting the public's health and safety through their licensing and regulation of psychologists and that such state regulation will best protect public health and safety;

Whereas, this compact does not apply when a psychologist is licensed in both the home and receiving states; and

Whereas, this compact does not apply to permanent in-person, face-to-face practice, but it does allow for authorization of temporary psychological practice.

Consistent with these principles, this compact is designed to achieve the following purposes and objectives:

1. Increase public access to professional psychological services by allowing for telepsychological practice across state lines as well as temporary in-person, face-to-face services into a state where the psychologist is not licensed to practice psychology;
2. Enhance the states' ability to protect the public's health and safety, especially client/patient safety;
3. Encourage the cooperation of compact states in the areas of psychology licensure and regulation;
4. Facilitate the exchange of information between compact states regarding psychologist licensure, adverse actions and disciplinary history;

5. Promote compliance with the laws governing psychological practice in each compact state; and
6. Invest all compact states with the authority to hold licensed psychologists accountable through the mutual recognition of compact state licenses.

ARTICLE II

DEFINITIONS

As used in this compact:

- A. "Adverse action" means any action that is taken by a state psychology regulatory authority that finds a violation of a statute or regulation, that is identified by the state psychology regulatory authority as discipline and that is a matter of public record.
- B. "Association of state and provincial psychology boards" or "ASPPB" means the recognized membership organization composed of state and provincial psychology regulatory authorities responsible for the licensure and registration of psychologists throughout the United States and Canada.
- C. "Authority to practice interjurisdictional telepsychology" means a licensed psychologist's authority to practice telepsychology, within the limits authorized under this compact, in another compact state.
- D. "Bylaws" means those bylaws established by the psychology interjurisdictional compact commission pursuant to article X of this compact for its governance or for directing and controlling its actions and conduct.
- E. "Client/patient" means the recipient of psychological services, whether psychological services are delivered in the context of health care, corporate, supervision or consulting services.
- F. "Commissioner" means the voting representative appointed by each state psychology regulatory authority pursuant to article X of this compact.
- G. "Compact state" means a state, the District of Columbia, or a United States territory that has enacted this compact legislation and that has not withdrawn pursuant to article XIII, subsection C or been terminated pursuant to article XII, subsection B.
- H. "Confidentiality" means the principle that data or information is not made available or disclosed to unauthorized persons or processes.
- I. "Coordinated licensure information system" or "coordinated database" means an integrated process for collecting, storing and sharing information on psychologists' licensure and enforcement activities related to psychology licensure laws that is administered by the recognized membership organization composed of state and provincial psychology regulatory authorities.
- J. "Day" means any part of a day in which psychological work is performed.
- K. "Distant state" means the compact state where a psychologist is physically present, not through the use of telecommunications technologies, to provide temporary in-person, face-to-face psychological services.
- L. "E.Passport" means a certificate issued by the association of state and provincial psychology boards that promotes the standardization in the criteria of interjurisdictional telepsychology practice and facilitates the process for licensed psychologists to provide telepsychological services across state lines.

M. "Executive board" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.

N. "Home state" means a compact state where a psychologist is licensed to practice psychology. If the psychologist is licensed in more than one compact state and is practicing under the authorization to practice interjurisdictional telepsychology, the home state is the compact state where the psychologist is physically present when the telepsychological services are delivered. If the psychologist is licensed in more than one compact state and is practicing under the temporary authorization to practice, the home state is any compact state where the psychologist is licensed.

O. "Identity history summary" means a summary of information retained by the federal bureau of investigation or another designee with similar authority in connection with arrests and in some instances, federal employment, naturalization or military service.

P. "In-person, face-to-face" means interactions in which the psychologist and the client/patient are in the same physical space and does not include interactions that may occur through the use of telecommunication technologies.

Q. "Interjurisdictional practice certificate" or "IPC" means a certificate issued by the association of state and provincial psychology boards that grants temporary authority to practice based on notification to the state psychology regulatory authority of intention to practice temporarily, and verification of one's qualifications for such practice.

R. "License" means authorization by a state psychology regulatory authority to engage in the independent practice of psychology, which would be unlawful without the authorization.

S. "Non-compact state" means any state that is not at the time a compact state.

T. "Psychologist" means an individual who is licensed for the independent practice of psychology.

U. "Psychology interjurisdictional compact commission" or "commission" means the national administration of which all compact states are members.

V. "Receiving state" means a compact state where the client/patient is physically located when the telepsychological services are delivered.

W. "Rule" means a written statement by the psychology interjurisdictional compact commission promulgated pursuant to article XI of this compact that is of general applicability, that implements, interprets or prescribes a policy or provision of the compact or an organizational, procedural or practice requirement of the commission and that has the force and effect of statutory law in a compact state, and includes the amendment, repeal or suspension of an existing rule.

X. "Significant investigatory information" means either of the following:

1. Investigative information that a state psychology regulatory authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proven true, would indicate more than a violation of state statute or ethics code that would be considered more substantial than a minor infraction.

2. Investigative information that indicates that the psychologist represents an immediate threat to public health and safety regardless of whether the psychologist has been notified or had an opportunity to respond.

Y. "State" means a state, commonwealth, territory or possession of the United States or the District of Columbia.

Z. "State psychology regulatory authority" means the board, office or other agency with the legislative mandate to license and regulate the practice of psychology.

AA. "Telepsychology" means the provision of psychological services using telecommunication technologies.

BB. "Temporary authorization to practice" means a licensed psychologist's authority to conduct temporary in-person, face-to-face practice, within the limits authorized under this compact, in another compact state.

CC. "Temporary in-person, face-to-face practice" means that a psychologist is physically present, not through the use of telecommunications technologies, in the distant state to provide for the practice of psychology for thirty days within a calendar year, based on notification to the distant state.

ARTICLE III

HOME STATE LICENSURE

A. The home state shall be a compact state where a psychologist is licensed to practice psychology.

B. A psychologist may hold one or more compact state licenses at a time. If the psychologist is licensed in more than one compact state, the home state is the compact state where the psychologist is physically present when the services are delivered as authorized by the authority to practice interjurisdictional telepsychology under the terms of this compact.

C. Any compact state may require a psychologist who has not been previously licensed in a compact state to obtain and retain a license to be authorized to practice in the compact state under circumstances not authorized by the authority to practice interjurisdictional telepsychology under the terms of this compact.

D. Any compact state may require a psychologist to obtain and retain a license to be authorized to practice in a compact state under circumstances not authorized by temporary authorization to practice under the terms of this compact.

E. A home state's license authorizes a psychologist to practice in a receiving state under the authority to practice interjurisdictional telepsychology only if the compact state:

1. Currently requires the psychologist to hold an active E.Passport;
2. Has a mechanism in place for receiving and investigating complaints about licensed individuals;
3. Notifies the commission, in compliance with the terms in this compact, of any adverse action or significant investigatory information regarding a licensed individual;
4. Requires an identity history summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the federal bureau of investigation or another designee with similar authority, no later than ten years after activation of the compact; and
5. Complies with the bylaws and rules of the commission.

F. A home state's license grants temporary authorization to practice to a psychologist in a distant state only if the compact state:

1. Currently requires the psychologist to hold an active IPC;
2. Has a mechanism in place for receiving and investigating complaints about licensed individuals;
3. Notifies the commission, in compliance with the terms in this compact, of any adverse action or significant investigatory information regarding a licensed individual;
4. Requires an identity history summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the federal bureau of investigation or another designee with similar authority, no later than ten years after activation of the compact; and
5. Complies with the bylaws and rules of the commission.

ARTICLE IV

COMPACT PRIVILEGE TO PRACTICE TELEPSYCHOLOGY

A. Compact states shall recognize the right of a psychologist who is licensed in a compact state in conformance with article III of this compact to practice telepsychology in other compact states, or receiving states, in which the psychologist is not licensed, under the authority to practice interjurisdictional telepsychology as provided in this compact.

B. To exercise the authority to practice interjurisdictional telepsychology under the terms and provisions of this compact, a psychologist licensed to practice in a compact state must meet all of the following:

1. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:

(a) Regionally accredited by an accrediting body recognized by the United States department of education to grant graduate degrees or authorized by provincial statute or royal charter to grant doctoral degrees; or

(b) A foreign college or university deemed to be equivalent to subdivision (a) of this paragraph by a foreign credential evaluation service that is a member of the national association of credential evaluation services or by a recognized foreign credential evaluation service; and

2. Hold a graduate degree in psychology that meets the following criteria:

(a) The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;

(b) The psychology program must stand as a recognizable, coherent, organizational entity within the institution;

(c) There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

(d) The program must consist of an integrated, organized sequence of study;

(e) There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

(f) The designated director of the program must be a psychologist and a member of the core faculty;

- (g) The program must have an identifiable body of students who are matriculated in that program for a degree;
- (h) The program must include supervised practicum, internship or field training appropriate to the practice of psychology;
- (i) The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degrees and a minimum of one academic year of full-time graduate study for master's degrees;
- (j) The program includes an acceptable residency as defined by the rules of the commission.

3. Possess a current, full and unrestricted license to practice psychology in a home state that is a compact state;

4. Have no history of adverse action that violates the rules of the commission;

5. Have no criminal record history reported on an identity history summary that violates the rules of the commission;

6. Possess a current, active E.Passport;

7. Provide attestations in regard to areas of intended practice, conformity with standards of practice, competence in telepsychology technology, criminal background and knowledge and adherence to legal requirements in the home and receiving states, and provide a release of information to allow for primary source verification in a manner specified by the commission; and

8. Meet other criteria as defined by the rules of the commission.

C. The home state maintains authority over the license of the psychologist practicing into a receiving state under the authority to practice telepsychology.

D. A psychologist practicing into a receiving state under the authority to practice interjurisdictional telepsychology will be subject to the receiving state's scope of practice. A receiving state may, in accordance with that state's due process law, limit or revoke a psychologist's authority to practice interjurisdictional telepsychology in the receiving state and may take any other necessary actions under the receiving state's applicable law to protect the health and safety of the receiving state's citizens. If a receiving state takes action, the state shall promptly notify the home state and the commission.

E. If a psychologist's license in any home state or another compact state, or any authority to practice interjurisdictional telepsychology in any receiving state, is restricted, suspended or otherwise limited, the E.Passport shall be revoked and the psychologist is not eligible to practice telepsychology in a compact state under the authority to practice interjurisdictional telepsychology.

ARTICLE V

COMPACT TEMPORARY AUTHORIZATION TO PRACTICE

A. Compact states shall also recognize the right of a psychologist who is licensed in a compact state in conformance with article III of this compact to practice temporarily in other compact states, or distant states, in which the psychologist is not licensed, as provided in this compact.

B. To exercise the temporary authorization to practice under the terms and provisions of this compact, a psychologist licensed to practice in a compact state must meet all of the following:

1. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:

(a) Regionally accredited by an accrediting body recognized by the United States department of education to grant graduate degrees, or authorized by provincial statute or royal charter to grant doctoral degrees; or

(b) A foreign college or university deemed to be equivalent to subdivision (a) of this paragraph by a foreign credential evaluation service that is a member of the national association of credential evaluation services or by a recognized foreign credential evaluation service; and

2. Hold a graduate degree in psychology that meets the following criteria:

(a) The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;

(b) The psychology program must stand as a recognizable, coherent, organizational entity within the institution;

(c) There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

(d) The program must consist of an integrated, organized sequence of study;

(e) There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

(f) The designated director of the program must be a psychologist and a member of the core faculty;

(g) The program must have an identifiable body of students who are matriculated in that program for a degree;

(h) The program must include supervised practicum, internship or field training appropriate to the practice of psychology;

(i) The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degrees and a minimum of one academic year of full-time graduate study for master's degrees;

(j) The program includes an acceptable residency as defined by the rules of the commission.

3. Possess a current, full and unrestricted license to practice psychology in a home state that is a compact state;

4. Have no history of adverse action that violates the rules of the commission;

5. Have no criminal record history that violates the rules of the commission;

6. Possess a current, active IPC;

7. Provide attestations in regard to areas of intended practice and work experience and provide a release of information to allow for primary source verification in a manner specified by the Commission; and

8. Meet other criteria as defined by the rules of the commission.

C. A psychologist practicing into a distant state under the temporary authorization to practice shall practice within the scope of practice authorized by the distant state.

D. A psychologist practicing into a distant state under the temporary authorization to practice will be subject to the distant state's authority and law. A distant state may, in accordance with that state's due process law, limit or revoke a psychologist's temporary authorization to practice in the distant state and may take any other necessary actions under the distant state's applicable law to protect the health and safety of the distant state's citizens. If a distant state takes action, the state shall promptly notify the home state and the commission.

E. If a psychologist's license in any home state or another compact state, or any temporary authorization to practice in any distant state, is restricted, suspended or otherwise limited, the IPC shall be revoked and the psychologist is not eligible to practice in a compact state under the temporary authorization to practice.

ARTICLE VI

CONDITIONS OF TELEPSYCHOLOGY PRACTICE

IN A RECEIVING STATE

A psychologist may practice in a receiving state under the authority to practice interjurisdictional telepsychology only in the performance of the scope of practice for psychology as assigned by an appropriate state psychology regulatory authority, as defined in the rules of the commission, and under the following circumstances:

1. The psychologist initiates a client/patient contact in a home state via telecommunications technologies with a client/patient in a receiving state;
2. Other conditions regarding telepsychology as determined by rules promulgated by the commission.

ARTICLE VII

ADVERSE ACTIONS

A. A home state shall have the power to impose adverse action against a psychologist's license issued by the home state. A distant state shall have the power to take adverse action on a psychologist's temporary authorization to practice within that distant state.

B. A receiving state may take adverse action on a psychologist's authority to practice interjurisdictional telepsychology within that receiving state. A home state may take adverse action against a psychologist based on an adverse action taken by a distant state regarding temporary in-person, face-to-face practice.

C. If a home state takes adverse action against a psychologist's license, that psychologist's authority to practice interjurisdictional telepsychology is terminated and the E.Passport is revoked. Furthermore, that psychologist's temporary authorization to practice is terminated and the IPC is revoked as follows:

1. All home state disciplinary orders that impose adverse action shall be reported to the commission in accordance with the rules promulgated by the commission. A compact state shall report adverse actions in accordance with the rules of the commission.
2. In the event discipline is reported on a psychologist, the psychologist will not be eligible for telepsychology or temporary in-person, face-to-face practice in accordance with the rules of the commission.

3. Other actions may be imposed as determined by the rules of the commission.

D. A home state's psychology regulatory authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a licensee that occurred in a receiving state as it would if such conduct had occurred by a licensee within the home state. In such cases, the home state's law shall control in determining any adverse action against a psychologist's license.

E. A distant state's psychology regulatory authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a psychologist practicing under temporary authorization practice which occurred in that distant state as it would if such conduct had occurred by a licensee within the home state. In such cases, the distant state's law shall control in determining any adverse action against a psychologist's temporary authorization to practice.

F. Nothing in this compact shall override a compact state's decision that a psychologist's participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the compact state's law. Compact states must require psychologists who enter any alternative programs to not provide telepsychology services under the authority to practice interjurisdictional telepsychology or provide temporary psychological services under the temporary authorization to practice in any other compact state during the term of the alternative program.

G. No other judicial or administrative remedies shall be available to a psychologist in the event a compact state imposes an adverse action pursuant to subsection C of this article.

ARTICLE VIII

ADDITIONAL AUTHORITIES INVESTED IN A COMPACT

STATE'S PSYCHOLOGY REGULATORY AUTHORITY

A. In addition to any other powers granted under state law, a compact state's psychology regulatory authority shall have the authority under this compact to:

1. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a compact state's psychology regulatory authority for the attendance and testimony of witnesses or the production of evidence from another compact state shall be enforced in the latter state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing state psychology regulatory authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state where the witnesses or evidence are located; and

2. Issue cease and desist or injunctive relief orders to revoke a psychologist's authority to practice interjurisdictional telepsychology and/or temporary authorization to practice.

B. During the course of any investigation, a psychologist may not change the psychologist's home state licensure. A home state psychology regulatory authority is authorized to complete any pending investigations of a psychologist and to take any actions appropriate under its law. The home state psychology regulatory authority shall promptly report the conclusions of such investigations to the commission. Once an investigation has been completed, and pending the outcome of said investigation, the psychologist may change the psychologist's home state licensure. The commission shall promptly notify the new home state of any such decisions as provided in the rules of the commission. All information provided to the commission or distributed by compact states pursuant to the psychologist shall be confidential, filed under seal and used for investigatory or disciplinary matters. The commission may create additional rules for mandated or discretionary sharing of information by compact states.

ARTICLE IX

COORDINATED LICENSURE INFORMATION SYSTEM

A. The commission shall provide for the development and maintenance of a coordinated database and reporting system containing licensure and disciplinary action information on all psychologists or individuals to whom this compact is applicable in all compact states as defined by the rules of the commission.

B. Notwithstanding any other provision of state law to the contrary, a compact state shall submit a uniform data set to the coordinated database on all licensees as required by the rules of the commission, including:

1. Identifying information;
2. Licensure data;
3. Significant investigatory information;
4. Adverse actions against a psychologist's license;
5. An indicator that a psychologist's authority to practice interjurisdictional telepsychology and/or temporary authorization to practice is revoked;
6. Nonconfidential information related to alternative program participation information;
7. Any denial of application for licensure and the reasons for such denial; and
8. Other information that may facilitate the administration of this compact, as determined by the rules of the commission.

C. The coordinated database administrator shall promptly notify all compact states of any adverse action taken against, or significant investigative information on, any licensee in a compact state.

D. Compact States reporting information to the coordinated database may designate information that may not be shared with the public without the express permission of the compact state reporting the information.

E. Any information submitted to the coordinated database that is subsequently required to be expunged by the law of the compact state reporting the information shall be removed from the coordinated database.

ARTICLE X

ESTABLISHMENT OF THE PSYCHOLOGY INTERJURISDICTIONAL

COMPACT COMMISSION

A. The compact states hereby create and establish a joint public agency known as the psychology interjurisdictional compact commission as follows:

1. The commission is a body politic and an instrumentality of the compact states.
2. Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located.

The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting and Meetings are as follows:

1. The commission shall consist of one voting representative appointed by each compact state who shall serve as that state's commissioner. The state psychology regulatory authority shall appoint its delegate. This delegate shall be empowered to act on behalf of the compact state. This delegate shall be limited to:

(a) The executive director or executive secretary or a similar executive;

(b) A current member of the state psychology regulatory authority of a compact state; or

(c) A designee empowered with the appropriate delegate authority to act on behalf of the compact state.

2. Any commissioner may be removed or suspended from office as provided by the law of the state from which the commissioner is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compact state in which the vacancy exists.

3. Each commissioner shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. A commissioner shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for commissioners' participation in meetings by telephone or other means of communication.

4. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

5. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in article XI of this compact.

6. The commission may convene in a closed, nonpublic meeting if the commission must discuss:

(a) Noncompliance of a compact state with its obligations under the compact;

(b) The employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

(c) Current, threatened or reasonably anticipated litigation against the commission;

(d) The negotiation of contracts for the purchase or sale of goods, services or real estate;

(e) An accusation against any person of a crime or formally censuring any person;

(f) The disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(g) The disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(h) The disclosure of investigatory records compiled for law enforcement purposes;

(i) The disclosure of information related to any investigatory reports prepared by or on behalf of or for use of the commission or another committee charged with responsibility for investigation or determination of compliance issues pursuant to the compact; or

(j) Matters specifically exempted from disclosure by federal and state statute.

7. If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, of any person participating in the meeting, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release only by a majority vote of the commission or order of a court of competent jurisdiction.

C. The commission shall, by a majority vote of the commissioners, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this compact, including:

1. Establishing the fiscal year of the commission;

2. Providing reasonable standards and procedures:

(a) For the establishment and meetings of other committees; and

(b) Governing any general or specific delegation of any authority or function of the commission;

3. Providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals of such proceedings and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the commissioners vote to close a meeting to the public in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each commissioner with no proxy votes allowed;

4. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the commission;

5. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar law of any compact state, the bylaws shall exclusively govern the personnel policies and programs of the commission;

6. Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees;

7. Providing a mechanism for concluding the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact and after the payment and/or reserving of all of its debts and obligations;

8. The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the compact states;

9. The commission shall maintain its financial records in accordance with the bylaws; and

10. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

D. The commission shall have the following powers:

1. To promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rule shall have the force and effect of law and shall be binding in all compact states;
2. To bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state psychology regulatory authority or other regulatory body responsible for psychology licensure to sue or be sued under applicable law shall not be affected;
3. To purchase and maintain insurance and bonds;
4. To borrow, accept or contract for services of personnel, including employees of a compact state;
5. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the compact and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel and other related personnel matters;
6. To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same, provided that at all times the commission shall strive to avoid any appearance of impropriety or conflict of interest;
7. To lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold, improve or use, any property, real, personal or mixed, provided that at all times the commission shall strive to avoid any appearance of impropriety;
8. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;
9. To establish a budget and make expenditures;
10. To borrow money;
11. To appoint committees, including advisory committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;
12. To provide and receive information from, and to cooperate with, law enforcement agencies;
13. To adopt and use an official seal; and
14. To perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of psychology licensure, temporary in-person, face-to-face practice and telepsychology practice.

E. The elected officers shall serve as the executive board, which shall have the power to act on behalf of the commission according to the terms of this compact as follows:

1. The executive board shall be composed of the following six members:

(a) Five voting members who are elected from the current membership of the commission by the commission;

(b) One ex officio, nonvoting member from the recognized membership organization composed of state and provincial psychology regulatory authorities.

2. The ex officio member must have served as staff with or a member on a state psychology regulatory authority and will be selected by its respective organization.

3. The commission may remove any member of the executive board as provided in bylaws.

4. The Executive Board shall meet at least annually.

5. The executive board shall have the following duties and responsibilities:

(a) Recommend to the entire commission changes to the rules or bylaws, changes to this compact, fees paid by compact states such as annual dues, and any other applicable fees;

(b) Ensure compact administration services are appropriately provided, contractual or otherwise;

(c) Prepare and recommend the budget;

(d) Maintain financial records on behalf of the commission;

(e) Monitor compact compliance of member states and provide compliance reports to the commission;

(f) Establish additional committees as necessary; and

(g) Other duties as provided in rules or bylaws.

F. The financing of the commission shall be as follows:

1. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization and ongoing activities.

2. The commission may accept any and all appropriate revenue sources, donations and grants of money, equipment, supplies, materials and services.

3. The commission may levy on and collect an annual assessment from each compact state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based on a formula to be determined by the commission, which shall promulgate a rule binding on all compact states.

4. The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same, nor shall the commission pledge the credit of any of the compact states, except by and with the authority of the compact state.

5. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

G. Qualified immunity, defense and indemnification provisions are as follows:

1. The members, officers, executive director, employees and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities, except that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or wilful or wanton misconduct of that person.

2. The commission shall defend any member, officer, executive director, employee or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities, except that nothing in this paragraph shall be construed to prohibit that person from retaining his or her own counsel, and provided further, that the actual or alleged act, error or omission did not result from that person's intentional or wilful or wanton misconduct.

3. The commission shall indemnify and hold harmless any member, officer, executive director, employee or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities, if the actual or alleged act, error or omission did not result from the intentional or wilful or wanton misconduct of that person.

ARTICLE XI

RULEMAKING

A. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted under this article. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the compact states reject a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, that rule shall have no further force and effect in any compact state.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

D. Prior to promulgation and adoption of a final rule or rules by the commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted on, the commission shall file a notice of proposed rulemaking:

1. On the website of the commission; and

2. On the website of each compact state's psychology regulatory authority or the publication in which each state would otherwise publish proposed rules.

E. The notice of proposed rulemaking shall include:

1. The proposed time, date and location of the meeting in which the rule will be considered and voted on;

2. The text of the proposed rule or amendment and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person; and

4. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

F. Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.

G. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five persons who submit comments independently of each other;

2. A governmental subdivision or agency; or

3. A duly appointed person in an association that has at least twenty-five members.

H. If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time and date of the scheduled public hearing. The following apply to a hearing:

1. All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This paragraph does not preclude the commission from making a transcript or recording of the hearing if it so chooses.

4. Nothing in this subsection shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this subsection.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

J. The commission, by majority vote of all members, shall take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

K. If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rule without a public hearing.

L. On a determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment or hearing, provided that the usual rulemaking procedures provided in the compact and in this section shall be retroactively applied to the rule as soon as reasonably practicable but not later than ninety days after the effective date of the rule. For the purposes of this subsection, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety or welfare;

2. Prevent a loss of commission or compact state funds;
3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule;
or
4. Protect public health and safety.

M. The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the chair of the commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

ARTICLE XII

OVERSIGHT, DISPUTE RESOLUTION AND ENFORCEMENT

A. Oversight of the commission is as follows:

1. The executive, legislative and judicial branches of state government in each compact state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.
2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a compact state pertaining to the subject matter of this compact that may affect the powers, responsibilities or actions of the commission.
3. The commission shall be entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission shall render a judgment or order void as to the commission, this compact or promulgated rules.

B. Default, technical assistance and termination provisions are as follows:

1. If the commission determines that a compact state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:
 - (a) Provide written notice to the defaulting state and other compact states of the nature of the default, the proposed means of remedying the default or any other action to be taken by the commission; and
 - (b) Provide remedial training and specific technical assistance regarding the default.
2. If a state in default fails to remedy the default, the defaulting state may be terminated from the compact on an affirmative vote of a majority of the compact states, and all rights, privileges and benefits conferred by this compact shall be terminated on the effective date of termination. A remedy of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.
3. Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be submitted by the

commission to the Governor, the majority and minority leaders of the defaulting state's legislature and each of the compact states.

4. A compact state that has been terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including obligations which extend beyond the effective date of termination.

5. The commission shall not bear any costs incurred by the state that is found to be in default or that has been terminated from the compact, unless agreed on in writing between the commission and the defaulting state.

6. The defaulting state may appeal the action of the commission by petitioning the United States district court for the state of Georgia or the federal district where the compact has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney fees.

C. Dispute resolution provisions are as follows:

1. On request by a compact state, the commission shall attempt to resolve disputes related to the compact which arise among compact states and between compact and non-compact states.

2. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes that arise before the commission.

D. Enforcement provisions are as follows:

1. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. By majority vote, the commission may initiate legal action in the United States district court for the state of Georgia or the federal district where the compact has its principal offices against a compact state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney fees.

3. The remedies in this subsection are not the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

ARTICLE XIII

DATE OF IMPLEMENTATION OF THE PSYCHOLOGY

INTERJURISDICTIONAL COMPACT COMMISSION and

ASSOCIATED RULES, WITHDRAWAL AND AMENDMENTS

A. The compact shall take effect on the date on which the compact is enacted into law in the seventh compact state. The provisions that become effective at that time shall be limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of this compact.

B. Any state that joins the compact subsequent to the commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule

that has been previously adopted by the commission shall have the full force and effect of law on the day the compact becomes law in that state.

C. Any compact state may withdraw from this compact by enacting a statute repealing the same, subject to the following:

1. A compact state's withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's psychology regulatory authority to comply with the investigative and adverse action reporting requirements of this compact before the effective date of withdrawal.

D. Nothing in this compact shall be construed to invalidate or prevent any psychology licensure agreement or other cooperative arrangement between a compact state and a non-compact state that does not conflict with the provisions of this compact.

E. This compact may be amended by the compact states. No amendment to this compact shall become effective and binding on any compact state until it is enacted into the law of all compact states.

ARTICLE XIV

CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. If this compact is held contrary to the constitution of any state member thereto, the compact remains in full force and effect as to the remaining compact states.

32-2087.01. Participation in compact as condition of employment: prohibition

An employer may not require a psychologist to seek licensure through the psychology interjurisdictional compact enacted by section 32-2087 as a condition of initial or continued employment as a psychologist in this state. An employer may require that a psychologist obtain and maintain a license to practice psychology in multiple states, if the psychologist is free to obtain and maintain the licenses by any means authorized by the laws of the respective states.

32-2087.02. Open meeting requirements

If a meeting, or a portion of a meeting, of the psychology interjurisdictional compact commission is closed pursuant to section 32-2087, article X, subsection B, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision consistent with title 38, chapter 3, article 3.1.

32-2087.03. State board of psychologist examiners: notice of commission actions

The state board of psychologist examiners, within thirty days after a psychology interjurisdictional compact commission action, shall post on the board's public website notice of any commission action that may affect a psychologist's license.

32-2091. Definitions

In this article, unless the context otherwise requires:

1. "Active license" means a current license issued by the board to a person licensed pursuant to this article.
2. "Adequate records" means records that contain, at a minimum, sufficient information to identify the client, the dates of service, the fee for service, the payments for service and the type of service given and copies of any reports that may have been made.
3. "Behavior analysis" means the design, implementation and evaluation of systematic environmental modifications by a behavior analyst to produce socially significant improvements in human behavior based on the principles of behavior identified through the experimental analysis of behavior. Behavior analysis does not include cognitive therapies or psychological testing, neuropsychology, psychotherapy, sex therapy, psychoanalysis, hypnotherapy and long-term counseling as treatment modalities.
4. "Behavior analysis services" means the use of behavior analysis to assist a person to learn new behavior, increase existing behavior, reduce existing behavior and emit behavior under precise environmental conditions. Behavior analysis includes behavioral programming and behavioral programs.
5. "Behavior analyst" means a person who is licensed pursuant to this article to practice behavior analysis.
6. "Client" means:
 - (a) A person or entity that receives behavior analysis services.
 - (b) A corporate entity, a governmental entity or any other organization that has a professional contract to provide services or benefits primarily to an organization rather than to an individual.
 - (c) An individual's legal guardian for decision making purposes, except that the individual is the client for issues that directly affect the individual's physical or emotional safety and issues that the legal guardian agrees to specifically reserve to the individual.
7. "Exploit" means an action by a behavior analyst who takes undue advantage of the professional association with a client, student or supervisee for the advantage or profit of the behavior analyst.
8. "Health care institution" means a facility that is licensed pursuant to title 36, chapter 4, article 1.
9. "Incompetent as a behavior analyst" means that a person who is licensed pursuant to article 4 of this chapter lacks the knowledge or skills of a behavior analyst to a degree that is likely to endanger the health of a client.
10. "Letter of concern" means an advisory letter to notify a licensee that while there is insufficient evidence to support disciplinary action the board believes the licensee should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in action against the license.
11. "Supervisee" means a person who acts under the extended authority of a behavior analyst to provide behavioral services and includes a person who is in training to provide these services.
12. "Unprofessional conduct" includes the following activities, whether occurring in this state or elsewhere:
 - (a) Obtaining a fee by fraud or misrepresentation.
 - (b) Betraying professional confidences.

- (c) Making or using statements of a character tending to deceive or mislead.
- (d) Aiding or abetting a person who is not licensed pursuant to this article in representing that person as a behavior analyst.
- (e) Gross negligence in the practice of a behavior analyst.
- (f) Sexual intimacies or sexual intercourse with a current client or a supervisee or with a former client within two years after the cessation or termination of treatment. For the purposes of this subdivision, "sexual intercourse" has the same meaning prescribed in section 13-1401.
- (g) Engaging or offering to engage as a behavior analyst in activities that are not congruent with the behavior analyst's professional education, training and experience.
- (h) Failing or refusing to maintain and retain adequate business, financial or professional records pertaining to the behavior analysis services provided to a client.
- (i) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.
- (j) Making a fraudulent or untrue statement to the board or its investigators, staff or consultants.
- (k) Violating any federal or state law that relates to the practice of behavior analysis or to obtain a license to practice behavior analysis.
- (l) Practicing behavior analysis while impaired or incapacitated to the extent and in a manner that jeopardizes the welfare of a client or renders the services provided ineffective.
- (m) Using fraud, misrepresentation or deception to obtain or attempt to obtain a behavior analysis license or to pass or attempt to pass a behavior analysis licensing examination or in assisting another person to do so.
- (n) Unprofessional conduct in another jurisdiction that resulted in censure, probation or a civil penalty or in the denial, suspension, restriction or revocation of a certificate or license to practice as a behavior analyst.
- (o) Providing services that are unnecessary or unsafe or otherwise engaging in activities as a behavior analyst that are unprofessional by current standards of practice.
- (p) Falsely or fraudulently claiming to have performed a professional service, charging for a service or representing a service as the licensee's own if the licensee has not rendered the service or assumed supervisory responsibility for the service.
- (q) Representing activities or services as being performed under the licensee's supervision if the behavior analyst has not assumed responsibility for them and has not exercised control, oversight and review.
- (r) Failing to obtain a client's informed and written consent to release personal or otherwise confidential information to another party unless the release is otherwise authorized by law.
- (s) Failing to make client records in the behavior analyst's possession promptly available to another behavior analyst on receipt of proper authorization to do so from the client, a minor client's parent, the client's legal guardian or the client's authorized representative or failing to comply with title 12, chapter 13, article 7.1.

- (t) Failing to take reasonable steps to inform or protect a client's intended victim and inform the proper law enforcement officials if the behavior analyst becomes aware during the course of providing or supervising behavior analysis services that a client intends or plans to inflict serious bodily harm on another person.
- (u) Failing to take reasonable steps to protect a client if the behavior analyst becomes aware during the course of providing or supervising behavior analysis services that a client intends or plans to inflict serious bodily harm on self.
- (v) Abandoning or neglecting a client in need of immediate care without making suitable arrangements for continuation of the care.
- (w) Engaging in direct or indirect personal solicitation of clients through the use of coercion, duress, undue influence, compulsion or intimidation practices.
- (x) Engaging in false, deceptive or misleading advertising.
- (y) Exploiting a client, student or supervisee.
- (z) Failing to report information to the board regarding a possible act of unprofessional conduct committed by another behavior analyst who is licensed pursuant to this article unless this reporting violates the behavior analyst's confidential relationship with a client pursuant to this article. A behavior analyst who reports or provides information to the board in good faith is not subject to an action for civil damages.
- (aa) Violating a formal board order, consent agreement, term of probation or stipulated agreement issued under this article.
- (bb) Failing to furnish information in a timely manner to the board or its investigators or representatives if requested or subpoenaed by the board as prescribed by this article.
- (cc) Failing to make available to a client or to the client's designated representative, on written request, a copy of the client's record, excluding raw test data, psychometric testing materials and other information as provided by law.
- (dd) Violating an ethical standard adopted by the board.
- (ee) Representing oneself as a psychologist or permitting others to do so if the behavior analyst is not also licensed as a psychologist pursuant to this chapter.

32-2091.01. [Fees](#)

A. The board, by a formal vote, shall establish fees for the following relating to the licensure of behavior analysts:

1. An application for an active license.
2. An application for a temporary license.
3. Renewal of an active license.
4. Issuance of an initial license.

B. The board may charge additional fees for services it deems necessary and appropriate to carry out this article. These fees shall not exceed the actual cost of providing the service.

C. The board shall not refund fees except as otherwise provided in this article. On special request and for good cause, the board may return the license renewal fee.

32-2091.02. Qualifications of applicant

A person who wishes to practice as a behavior analyst must be licensed pursuant to this article. An applicant for licensure must meet all of the following requirements:

1. Submit an application as prescribed by the board.
2. Be at least twenty-one years of age.
3. Be of good moral character. The board's standard to determine good moral character shall not violate federal discrimination laws.
4. Pay all applicable fees prescribed by the board.
5. Have the physical and mental capability to safely and competently engage in the practice of behavior analysis.
6. Not have committed any act or engaged in any conduct that would constitute grounds for disciplinary action against a licensee pursuant to this article.
7. Not have had a professional license or certificate refused, revoked, suspended or restricted in any regulatory jurisdiction in the United States or in another country for reasons that relate to unprofessional conduct. If the board finds that the applicant committed an act or engaged in conduct that would constitute grounds for disciplinary action in this state, the board shall determine to its satisfaction that the conduct has been corrected, monitored and resolved. If the matter has not been resolved, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.
8. Not have voluntarily surrendered a license or certificate in another regulatory jurisdiction in the United States or in another country while under investigation for reasons that relate to unprofessional conduct. If another jurisdiction has taken disciplinary action against an applicant, the board shall determine to its satisfaction that the cause for the action was corrected and the matter resolved. If the matter has not been resolved by that jurisdiction, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.
9. Not have a complaint, allegation or investigation pending before another regulatory jurisdiction in the United States or another country that relates to unprofessional conduct. If an applicant has any such complaints, allegations or investigations pending, the board shall suspend the application process and may not issue or deny a license to the applicant until the complaint, allegation or investigation is resolved.
10. Beginning January 1, 2022, have applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

32-2091.03. Educational and training standards for licensure

A. An applicant for licensure as a behavior analyst must meet standards adopted by the state board of psychologist examiners, including meeting graduate-level education and supervised experience requirements and passing a national examination. The state board of psychologist examiners shall adopt

standards consistent with the standards set by a nationally recognized behavior analyst certification board, except that:

1. The number of hours required for supervised experience must be at least one thousand five hundred hours of supervised work experience.

2. If the experience was obtained in a state that licensed behavior analysts at the time of the supervised work experience, the supervisor must be licensed in the state where the behavior analysis trainee services were provided.

B. The standards adopted for supervised experience must also be consistent with the standards set by a nationally recognized behavior analyst certification board. If the state board of psychologist examiners does not agree with a standard set by a nationally recognized behavior analyst certification board, the state board may adopt an alternate standard.

32-2091.04. Reciprocity

The board may issue a license to a person as a behavior analyst if the person is licensed or certified by a regulatory agency of another state that imposes requirements that are substantially equivalent to those imposed by this article at an equivalent or higher practice level as determined by the board, pays the fee prescribed by the board and meets all of the following requirements:

1. Submits a written application prescribed by the board.

2. Is of good moral character. The board's standard to determine good moral character shall not violate federal discrimination laws.

3. Documents to the board's satisfaction proof of initial licensure or certification at an equivalent designation for which the applicant is seeking licensure in this state and proof that the license or certificate is current and in good standing.

4. Documents to the board's satisfaction proof that any other license or certificate issued to the applicant by another state has not been suspended or revoked. If a licensee or certificate holder has been subjected to any other disciplinary action, the board may assess the magnitude of that action and make a decision regarding reciprocity based on this assessment.

5. Meets any other requirements prescribed by the board by rule.

32-2091.06. Temporary licenses; inactive status; reinstatement to active status

A. If the board requires an additional examination, it may issue a temporary license to a behavior analyst who is licensed or certified under the laws of another jurisdiction if the behavior analyst applies to the board for licensure and meets the educational, experience and first examination requirements of this article.

B. A temporary license issued pursuant to this section is effective from the date the application is approved until the last day of the month in which the applicant receives the results of the additional examination.

C. The board shall not extend, renew or reissue a temporary license or allow it to continue in effect beyond the period authorized by this section.

D. The board's denial of an application for licensure terminates a temporary license.

E. The board may place on inactive status and waive the license renewal fee requirements for a person who is temporarily or permanently unable to practice as a behavior analyst due to physical or mental incapacity or disability. An initial request for the waiver of renewal fees shall be accompanied by the renewal fee for an active license, which the board shall return if the waiver is granted. The board shall judge each request for the waiver of renewal fees on its own merits and may seek the verification it deems necessary to substantiate the facts of the situation. A behavior analyst who is retired is exempt from paying the renewal fee. A behavior analyst may request voluntary inactive status by submitting to the board an application on a form prescribed by the board and an affirmation that the behavior analyst will not practice as a behavior analyst in this state for the duration of the voluntary inactive status and by paying the required fee as prescribed by the board by rule.

F. A behavior analyst who is on any form of inactive status shall renew the inactive status every two years by submitting a renewal form provided by the board and paying any applicable fee as prescribed by the board by rule. A notice to renew is fully effective by mailing the renewal application to the licensee's last known address of record in the board's file. Notice is complete at the time of its deposit in the mail. A behavior analyst who is on inactive status due to physical or mental incapacity or disability or retirement shall use the term "inactive" to describe the person's status and shall not practice as a behavior analyst.

G. A behavior analyst on inactive status may request reinstatement of the license to active status by applying to the board. The board shall determine whether the person has been or is in violation of any provisions of this article and whether the person has maintained and updated the person's professional knowledge and capability to practice as a behavior analyst. The board may require the person to take or retake the licensure examinations and may require other knowledge or skill training experiences. If approved for active status, the person shall pay a renewal fee that equals the renewal fee for the license to be reinstated.

H. Beginning January 1, 2022, an applicant for a temporary license pursuant to this section shall have applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

32-2091.07. Active license; issuance; renewal; expiration; continuing education

A. If the applicant satisfies all of the requirements for licensure pursuant to this article, the board shall issue an active license and shall prorate the fee for issuing that license for the period remaining until the last day of the birth month of the applicant of the next odd-numbered year or even-numbered year pursuant to subsection B, paragraph 1 or 2 of this section.

B. A person holding an active or inactive license shall apply to renew the license on or before the last day of the birth month of the licensee every other year as follows:

1. In each odd-numbered year, if the licensee holds an odd-numbered license.
2. In each even-numbered year, if the licensee holds an even-numbered license.

C. The application shall include any applicable renewal fee as prescribed by the board by rule. Except as provided in section 32-4301 or 41-1092.11, a license expires if the licensee fails to renew the license on or before the last day of the licensee's birth month of the licensee's renewal year pursuant to subsection B of this section. A licensee may reinstate an expired license by paying a reinstatement fee as prescribed by the board by rule within two months after the last day of the licensee's birth month of that year. Beginning two months after the last day of the licensee's birth month during the licensee's renewal year until the last day of the licensee's birth month the following year, a licensee may reinstate the license by paying a reinstatement fee as prescribed by the board by rule and providing proof of competency and qualifications to the board. This proof may include continuing education, an oral examination, a written examination or an interview with the board. A licensee whose license is not reinstated within a year after the last day of

the licensee's birth month of the licensee's renewal year may reapply for licensure as prescribed by this article. A notice to renew is fully effective by mailing or electronically providing the notice to the licensee's last known address of record or last known email address of record in the board's file. Notice is complete at the time of deposit in the mail or when the email is sent.

D. A person renewing a license shall attach to the completed renewal form a report of disciplinary actions or restrictions placed against the license by another state licensing or disciplinary board or disciplinary actions or sanctions imposed by a state or national behavior analysis ethics committee or health care institution. The report shall include the name and address of the sanctioning agency or health care institution, the nature of the action taken and a general statement of the charges leading to the action.

E. A person who renews an active license to practice behavior analysis in this state shall satisfy a continuing education requirement designed to provide the necessary understanding of current developments, skills, procedures or treatment related to the practice of behavior analysis in the amount and during the period the board prescribes. The board shall prescribe documentation requirements.

F. A person who applies for an initial renewal of a license pursuant to this section on or after January 1, 2022 shall possess or have applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

32-2091.08. [Exemptions from licensure](#)

A. This article does not limit the activities, services and use of a title by the following:

1. A behavior analyst who is employed in a common school, high school or charter school setting and who is certified to use that title by the department of education if the services or activities are a part of the duties of that person's common school, high school or charter school employment.

2. An employee of a government agency in a subdoctorate position who uses the word "assistant" or "associate" after the title and who is supervised by a doctorate position employee who is licensed as a behavior analyst, including a temporary licensee.

3. A matriculated graduate student, or a trainee whose activities are part of a defined behavior analysis program of study, practicum, intensive practicum or supervised independent fieldwork. The practice under this paragraph requires direct supervision consistent with the standards set by a nationally recognized behavior analyst certification board, as determined by the state board of psychologist examiners. A student or trainee may not claim to be a behavior analyst and must use a title that clearly indicates the person's training status, such as "behavior analysis student" or "behavior analysis trainee".

4. A person who resides outside of this state and who is currently licensed or certified as a behavior analyst in that state if the activities and services conducted in this state are within the behavior analyst's customary area of practice, do not exceed twenty days per year and are not otherwise in violation of this article and the client, public or consumer is informed of the limited nature of these activities and services and that the behavior analyst is not licensed in this state.

5. A person in the employ of Arizona state university, northern Arizona university, the university of Arizona or another regionally accredited university in this state if the services are a part of the faculty duties of that person's salaried position and the person is participating in a graduate program.

6. A noncredentialed individual who delivers applied behavior analysis services under the extended authority and direction of a licensed behavior analyst. The individual may not claim to be a professional behavior analyst and must use a title indicating the person's nonprofessional status, such as "ABA technician", "behavior technician" or "tutor".

B. This article does not prevent a member of other recognized professions who is licensed, certified or regulated under the laws of this state from rendering services within that person's scope of practice and code of ethics if that person does not claim to be a behavior analyst.

32-2091.09. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements; civil penalty

A. The board on its own motion may investigate evidence that appears to show that a behavior analyst is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis. A health care institution shall, and any other person may, report to the board information that appears to show that a behavior analyst is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis. The board shall notify the licensee about whom information has been received as to the content of the information within one hundred twenty days after receiving the information. A person who reports or provides information to the board in good faith is not subject to an action for civil damages. The board, if requested, shall not disclose the name of the person providing information unless this information is essential to proceedings conducted pursuant to this section. The board shall report a health care institution that fails to report as required by this section to the institution's licensing agency.

B. A health care institution shall inform the board if the privileges of a licensee to practice in that institution are denied, revoked, suspended or limited because of actions by the licensee that appear to show that the person is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis, along with a general statement of the reasons that led the health care institution to take this action. A health care institution shall inform the board if a licensee under investigation resigns the licensee's privileges or if a licensee resigns in lieu of disciplinary action by the health care institution. Notification must include a general statement of the reasons for the resignation.

C. The board may require the licensee to undergo any combination of mental, physical or psychological competence examinations at the licensee's expense and shall conduct investigations necessary to determine the competence and conduct of the licensee.

D. Except as provided in subsection E of this section, the committee on behavior analysts shall review all complaints against behavior analysts and, based on the information provided pursuant to subsection A or B of this section, shall submit its recommendations to the full board.

E. If the board finds, based on the information it receives under subsection A or B of this section, that the public health, safety or welfare requires emergency action, the board may order a summary suspension of a license pending proceedings for revocation or other action. If the board issues this order, the board shall serve the licensee with a written notice of complaint and formal hearing pursuant to title 41, chapter 6, article 10, setting forth the charges made against the licensee and the licensee's right to a formal hearing before the board or an administrative law judge within sixty days. The board shall notify the committee on behavior analysts of any action taken pursuant to this subsection.

F. If the board finds that the information provided pursuant to subsection A or B of this section is not of sufficient seriousness to merit direct action against the licensee, the board may take any of the following actions:

1. Dismiss if the board believes the information is without merit.
2. File a letter of concern.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

G. If the board believes the information provided pursuant to subsection A or B of this section is or may be true, the board may request an informal interview with the licensee. If the licensee refuses to be interviewed or if pursuant to an interview the board determines that cause may exist to revoke or suspend the license, the board shall issue a formal complaint and hold a hearing pursuant to title 41, chapter 6, article 10. If as a result of an informal interview or a hearing the board determines that the facts do not warrant revocation or suspension of the license, the board may take any of the following actions:

1. Dismiss if the board believes the information is without merit.

2. File a letter of concern.

3. Issue a decree of censure.

4. Fix a period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. Probation may include temporary suspension for not more than twelve months, restriction of the license or restitution of fees to a client resulting from violations of this article. If a licensee fails to comply with a term of probation, the board may file a complaint and notice of hearing pursuant to title 41, chapter 6, article 10 and take further disciplinary action.

5. Enter into an agreement with the licensee to restrict or limit the licensee's practice or activities in order to rehabilitate the licensee, protect the public and ensure the licensee's ability to safely engage in the practice of behavior analysis.

6. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

H. If the board finds that the information provided pursuant to subsection A or B of this section warrants suspension or revocation of a license, the board shall hold a hearing pursuant to title 41, chapter 6, article 10. Notice of a complaint and hearing is fully effective by mailing a true copy to the licensee's last known address of record in the board's files. Notice is complete at the time of its deposit in the mail.

I. The board may impose a civil penalty of at least \$300 but not more than \$3,000 for each violation of this article or a rule adopted under this article. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it collects from civil penalties pursuant to this subsection in the state general fund.

J. If the board determines after a hearing that a licensee has committed an act of unprofessional conduct, is mentally or physically unable to safely engage in the practice of behavior analysis or is incompetent as a behavior analyst, the board may do any of the following in any combination and for any period of time it determines necessary:

1. Suspend or revoke the license.

2. Censure the licensee.

3. Place the licensee on probation.

K. A licensee may submit a written response to the board within thirty days after receiving a letter of concern. The response is a public document and shall be placed in the licensee's file.

L. A letter of concern is a public document and may be used in future disciplinary actions against a licensee. A decree of censure is an official action against the behavior analyst's license and may include a requirement that the licensee return fees to a client.

M. Except as provided in section 41-1092.08, subsection H, a person may appeal a final decision made pursuant to this section to the superior court pursuant to title 12, chapter 7, article 6.

N. If during the course of an investigation the board determines that a criminal violation may have occurred involving the delivery of behavior analysis services, it shall inform the appropriate criminal justice agency.

32-2091.10. Right to examine and copy evidence; subpoenas; right to counsel; confidentiality

A. In connection with an investigation conducted pursuant to this article, at all reasonable times the board and its authorized agents may examine and copy documents, reports, records and other physical evidence wherever located relating to the licensee's professional competence, unprofessional conduct or mental or physical ability to safely practice behavior analysis.

B. The board and its authorized agents may issue subpoenas to compel the attendance and testimony of witnesses and the production of documents and other physical evidence as prescribed in subsection A. The board may petition the superior court to enforce a subpoena.

C. Within five days of receiving a subpoena, a person may petition the board to revoke, limit or modify the subpoena. The board shall take this action if it determines that the evidence demanded is not relevant to the investigation. The person may petition the superior court for this relief without first petitioning the board.

D. A person appearing before the board or its authorized agents may be represented by an attorney.

E. Documents associated with an investigation are not open to the public and shall remain confidential. Documents may not be released without a court order compelling their production.

F. This section or any other provision of law making communications between a behavior analyst and client privileged does not apply to an investigation conducted pursuant to this article. The board, its employees and its agents shall keep in confidence the names of clients whose records are reviewed during an investigation.

32-2091.11. Injunction

A. The board may petition the superior court for an order to enjoin the following:

1. A person who is not licensed pursuant to this article from practicing behavior analysis.
2. The activities of a licensee that are an immediate threat to the public.
3. Criminal activities.

B. If the board seeks an injunction to stop the unlicensed practice of behavior analysis, it is sufficient to charge that the respondent on a certain day in a specific county engaged in the practice of behavior analysis without a license and without being exempt from the licensure requirements of this article. It is not necessary to show specific damages or injury.

C. The issuance of an injunction does not limit the board's authority to take other action against a licensee pursuant to this article.

32-2091.12. Violations; classification

A. It is a class 2 misdemeanor for a person who is not licensed pursuant to this article to engage in the practice of behavior analysis.

B. It is a class 2 misdemeanor for any person to:

1. Secure a license to practice pursuant to this article by fraud or deceit.
2. Impersonate a member of the board in order to issue a license to practice pursuant to this article.

C. It is a class 2 misdemeanor for a person who is not licensed pursuant to this article to use any combination of words, initials and symbols that leads the public to believe the person is licensed to practice behavior analysis in this state.

32-2091.13. Confidential communications

A. The confidential relations and communications between a client and a person who is licensed pursuant to this article, including temporary licensees, are placed on the same basis as those provided by law between an attorney and client. Unless the client waives the behavior analyst-client privilege in writing or in court testimony, a behavior analyst shall not voluntarily or involuntarily divulge information that is received by reason of the confidential nature of the behavior analyst's practice. The behavior analyst shall divulge to the board information it requires in connection with any investigation, public hearing or other proceeding. The behavior analyst-client privilege does not extend to cases in which the behavior analyst has a duty to report information as required by law.

B. The behavior analyst shall ensure that client records and communications are treated by clerical and paraprofessional staff at the same level of confidentiality and privilege required of the behavior analyst.

32-2091.14. Status as behavioral health professional

Notwithstanding any law to the contrary, the Arizona health care cost containment system administration shall recognize a behavior analyst who is licensed pursuant to this article as a behavioral health professional who is eligible for reimbursement of services.

32-2091.15. Committee on behavior analysts; membership; duties; board responsibilities

A. The committee on behavior analysts is established within the state board of psychologist examiners consisting of five members who are appointed by the governor and who serve at the pleasure of the governor. Each member shall serve for a term of five years beginning and ending on the third Monday in January. A committee member may not serve more than two full consecutive terms.

B. All members of the committee shall be licensed behavior analysts in professional practice, two of whom shall be members of the board. The committee shall annually elect a chairperson from among its membership.

C. Within one year after their initial appointment to the committee, members shall receive at least five hours of training prescribed by the board that includes instruction in ethics and open meeting requirements.

D. Committee members shall receive reimbursement of all expenses pursuant to title 38, chapter 4, article 2.

E. The committee shall make recommendations to the board on all matters relating to the licensing and regulation of behavior analysts. The committee may recommend regulatory changes to the board that are not specific to an individual licensee, but the committee shall obtain public input from behavior analyst licensees or their designated representatives before making any final recommendation to the board.

C-4

ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

Title 13, Chapter 4

Amend: R13-4-111, R13-4-114



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: October 4, 2022

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

FROM: Council Staff

DATE: September 14, 2022

SUBJECT: **ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD**
Title 13, Chapter 4

Amend: R13-4-111, R13-4-114

Summary:

This regular rulemaking from the Arizona Peace Officer Standards and Training Board (Board) seeks to amend two (2) rules in Title 13, Chapter 4, Articles 1 regarding General Provisions. Specifically, these amendments seek to increase the total number of hours of training required from eight (8) to twelve (12) while also reducing regulatory burdens by eliminating the distinction between continuing and proficiency training. Also, this rulemaking seeks to allow training, except firearms qualification and firearms target identification and judgment courses, to be provided by qualified instructors selected by the agency, which may be outside providers/vendors of peace officer training courses.

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

The Board 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 Board indicates it did not review or rely on any study in conducting this rulemaking.

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

The Board believes the economic impact of the rulemaking will be minimal for peace officers, law enforcement agencies, academies, training providers, and the Board. Although the rulemaking will result in extra hours of required training for all peace officers, the Board indicates the cost is minimal because training generally is provided during working hours. The Board states the cost results from redirecting the usual activity of a peace officer to the training. The Board indicates changes to reduce regulatory burdens by eliminating the distinction between continuing and proficiency training and allowing all training to be provided by qualified vendors will have a positive impact for all concerned.

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 Board concluded no less intrusive or less costly alternative method existed to achieve the intended purpose of the rulemaking. The Board states the rulemaking is not intrusive and the costs are minimal. The Board indicates the benefits of the rulemaking, increased public safety and reduced regulatory burdens, outweigh the costs.

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

Peace officers, law enforcement agencies, academies, providers of training courses, and the Board will be directly affected by, bear the costs of, and directly benefit from the rulemaking.

Currently, all peace officers are required to take eight hours of continuing training annually and all peace officers below the rank of Sergeant are required to take eight hours of proficiency training every three years. In this rulemaking, the requirement is changed so all peace officers, regardless of rank, take 12 hours of training annually with no distinction made between continuing and proficiency training.

There are currently 14,744 peace officers certified in Arizona and 2,934 hold a rank of at least Sergeant. The rule change means each of the 11,810 peace officers below the rank of Sergeant will be required to obtain an additional 1.33 hours of training annually. Each of the 2,934 peace officers at or above the rank of Sergeant will be required to obtain four additional hours of training annually. The total extra hours of training for all peace officers is 27,443 annually.

Training generally is provided on the job, during working hours. The economic cost of the training results from redirecting the usual activity of peace officers to the training. Training can be provided by either the Board or a law enforcement agency using qualified instructors. These instructors may be employees of the Board or the law enforcement agency so no additional cost is incurred for the instructor to provide the proficiency training. Different training subjects incur differing costs for training materials. For example, training regarding defensive tactics incurs no material costs while training regarding firearms incurs the cost of additional ammunition. These costs may already be included in most annual budgets and should produce minimal economic impact for law enforcement agencies.

The Board incurred the cost of completing this rulemaking and will incur the cost of implementing and enforcing the rule changes. The Board has the benefit of ensuring extra protection of public safety and reducing regulatory burdens.

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

The Board indicates there were no changes to the rules between the Notice of Supplemental Proposed Rulemaking published in the Administrative Register on June 17, 2022 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 Board indicates the two rules in this rulemaking were removed from a proposed rulemaking published in the Administrative Register on December 24, 2021, so the Board could address comments from law enforcement personnel. In response to comments, the Board made changes to reduce regulatory burdens by eliminating the distinction between continuing and proficiency training and allowing all training to be provided by qualified vendors.

A Notice of Supplemental Proposed Rulemaking incorporating these changes was published in the Administrative Register on June 17, 2022. The Board indicates it received no comments regarding the Notice of Supplemental Proposed Rulemaking and no one attended the oral proceeding held on July 18, 2022.

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

Not applicable. Neither rule in this rulemaking requires a license, permit, 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 Board indicates that no federal law is directly applicable to the subject of these rules.

11. Conclusion

The Board seeks to amend two (2) rules in Title 13, Chapter 4, Articles 1 to increase the total number of hours of training required from eight (8) to twelve (12) while also reducing regulatory burdens by eliminating the distinction between continuing and proficiency training. Also, this rulemaking seeks to allow training, except firearms qualification and firearms target identification and judgment courses, to be provided by qualified instructors selected by the agency, which may be outside providers/vendors of peace officer training courses.

Pursuant to A.R.S. § 41-1032(A), the proposed amendments to R13-4-114 will be effective 60 days after the rule package is filed with the Office of the Secretary of State if approved by the Council.

A.R.S. § 41-1823(A) states, “[n]o minimum qualifications for law enforcement officers adopted pursuant to this article shall be effective until six months after they have been filed with the secretary of state.” As such, the proposed amendments to R13-4-111 will be effective six months after the rule package is filed with the Office of the Secretary of State if approved by the Council.

Council staff recommends approval of this rulemaking.



Arizona Peace Officer Standards and Training Board

2643 East University Drive Phoenix, Arizona 85034-6914 Phone (602) 223-2514

August 9, 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 13. Public Safety
Chapter 4. Arizona Peace Officer Standards and Training 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:

- A. Close of record date: The rulemaking record was closed on July 18, 2022, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B). An exemption for this rulemaking from Executive Order 2021-02 was provided by Megan Fitzgerald of the Governor's Office by e-mail dated May 13, 2021. Ms. Fitzgerald approved the Board's request to submit this rule package to the Council in an e-mail dated August 8, 2022.
- B. Relation of the rulemaking to a five-year-review report: The rulemaking relates, in part, to a five-year-review report approved by the Council on June 1, 2021.
- C. New fee: The rulemaking does not establish a new fee.
- D. Fee increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is not requested. As required under A.R.S. § 41-1823, R13-4-111 will be effective six months after the rule package is filed with the Office of the Secretary of State.
- F. Certification regarding studies: I certify that the preamble accurately discloses 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 full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.

H. List of documents enclosed:

1. Cover letter signed by the Executive Director;
2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
3. Economic, Small Business, and Consumer Impact Statement.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Giordano".

Matt Giordano
Executive Director

NOTICE OF FINAL RULEMAKING
TITLE 13. PUBLIC SAFETY
CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

PREAMBLE

1. Articles, Parts, and Sections Affected

Rulemaking Action

R13-4-111

Amend

R13-4-114

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. § 41-1822(A)

Implementing statute: A.R.S. §§ 41-1822(A) and (B)

3. The effective date for the rules:

As specified under A.R.S. § 41-1032(A), R13-4-114 will be effective 60 days after the rule package is filed with the Office of the Secretary of State.

As required under A.R.S. § 41-1823, R13-4-111 will be effective six months after the rule package is filed with the Office of 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):

Under A.R.S. § 41-1823, R13-4-111 will be effective six months after the rule package is filed with the Office of the Secretary of State.

4. Citation to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 27 A.A.R. 1591, October 1, 2021

Notice of Proposed Rulemaking: 27 A.A.R. 2949, December 24, 2021

Notice of Supplemental Proposed Rulemaking: 28 A.A.R. 1399, June 17, 2022

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

Name: Michael Giammarino, Program Administrator

Address: 2643 E. University Drive
Phoenix, AZ 85034

Telephone: 602-223-2514

E-mail: mikeg@azpost.gov

Website: azpost.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:

Consistent with the issues identified in the Board's five-year-review report approved by the Council on June 1, 2021, the Board is making the following changes:

- Increase the total number of hours of training required and require every peace officer to obtain training every year;
- Reduce a regulatory burden by eliminating the distinction between continuing and proficiency training; and
- Allow training, except the firearms qualification and firearms target identification and judgment courses, to be provided by instructors selected by the agency.

An exemption for this rulemaking from Executive Order 2021-02 was provided by Megan Fitzgerald of the Governor's Office by e-mail dated May 13, 2021. Ms. Fitzgerald approved the Board's request to submit this rule package to the Council in an e-mail dated August 8, 2022.

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:

This Board did not review or rely on a study in its evaluation of or justification for the rules in this rulemaking.

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

Not applicable

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

The Board believes the economic impact of the rulemaking will be minimal for peace officers, law enforcement agencies, academies, training providers, and the Board. Although the rulemaking will result in extra hours of required training for all peace officers, the cost is minimal because training generally is provided during working hours. The cost results from redirecting the usual activity of a peace officer to the training. Changes to reduce regulatory burdens by eliminating the distinction

between continuing and proficiency training and allowing all training to be provided by qualified vendors will have positive impact for all concerned.

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

The two rules in this rulemaking were removed from the proposed rulemaking published in the Arizona Administrative Register on December 24, 2021, so the Board could address comments from law enforcement personnel. In response to comments, the Board made changes to reduce regulatory burdens by eliminating the distinction between continuing and proficiency training and allowing all training to be provided by qualified vendors. There are no changes between the supplemental and final notices.

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

The Board received no comments regarding the rulemaking. No one attended the oral proceeding on July 18, 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:

A.R.S. § 41-1823 requires that a rule establishing a minimum qualification for law enforcement officers not go into effect until six months after being filed with the Secretary of State. In this rulemaking, this provision applies to R4-13-111.

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:

Neither rule in this rulemaking requires 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:

No federal law is directly applicable to the subject of these rules. There are many federal laws that apply to law enforcement agencies and the work done by peace officers. These include general laws such as OSHA, EEOC, and ADA, federal laws regarding crimes, and federal case law regarding law enforcement. The training provided to peace officers is consistent with federal law.

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

No 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:

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:

Neither rule in this rule package was previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 13. PUBLIC SAFETY

CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

ARTICLE 1. GENERAL PROVISIONS

Section

R13-4-111. Certification Retention Requirements

R13-4-114. Minimum Course Requirements

ARTICLE 1. GENERAL PROVISIONS

R13-4-111. Certification Retention Requirements

A. ~~Continuing training~~ Training required.

1. A full-authority; ~~or specialty, or limited-authority~~ peace officer shall complete ~~eight~~ 12 hours of ~~continuing~~ training each year beginning January 1 following the date the officer is certified.
2. ~~Continuing training~~ Training course standards for peace officers. The provider of a ~~continuing~~ training course for peace officers shall ensure that:
 - a. The course curriculum consists of instruction on topics related to law enforcement operations and peace officer functions and skills;
 - ~~b. The instructor meets the requirements of R13-4-114(A)(2)(a) or (b);~~
 - ~~e.b.~~ An attendance verification certificate, which includes a statement that the provider believes the course meets the requirements of this Section, is given to each attendee for audit purposes;
 - ~~d.c.~~ If the training provider is an agency, an attendance roster and lesson plan or other information sufficient to determine compliance with this Section is made available upon request by the Board for Board audit; and
 - ~~e.~~ If the training provider is an outside provider that does not seek confirmation that the course meets the requirements under subsection (A)(3)(c), a copy of the lesson plan or other information sufficient to determine compliance with this Section is given to each attendee; and
 - ~~f.~~ If the training provider is an outside provider that seeks and receives confirmation under subsection (A)(3)(c), a copy of the Board's written confirmation is distributed to each attendee.
3. ~~Training providers. Courses of continuing training may be conducted by the Board, an agency, or an outside provider.~~
 - ~~a. All Board-provided continuing training courses meet the requirements of this Section.~~
 - ~~b. Agency-provided continuing training courses meet the requirements of this Section if all the requirements of subsection (A)(2) are met.~~
 - ~~e. Outside-provider continuing training courses meet the requirements of this Section if all the requirements of subsection (A)(2) are met. The Board may inform an outside provider in writing whether a continuing training course meets these requirements if a course package is submitted to the Board, in a timely manner before the training is conducted, that includes:~~

- i. ~~A description of the training course that allows the Board to determine whether the course contains advanced or remedial instruction on one or more of the topic areas specified in R13-4-116(E)(1);~~
- ii. ~~The name of the individual, or if applicable, the institution or organization, providing the training with sufficient information to allow the Board to determine whether the requirements of R13-4-114(A)(2)(a) or (b) are met;~~
- iii. ~~A course schedule listing the number of instructional hours; and~~
- iv. ~~An attestation that the outside provider shall, upon request by the Board, make the lesson plan or other information sufficient to determine compliance with this Section available for Board audit, and shall ensure that the requirement of subsection (A)(2)(b) is met.~~
- d. ~~The Board's confirmation that a continuing training course conducted by an outside provider meets the requirements of this Section is not an evaluation of the content of the course. Rather, confirmation indicates only that the topic of the course is consistent with R13-4-116(E)(1). Confirmation is effective as long as the information submitted to the Board under subsection (A)(3)(e) is unchanged.~~
- e. ~~The Board shall withdraw confirmation that a continuing training course conducted by an outside provider meets the requirements of this Section if the Board receives information that the course content conflicts with the basic peace officer course content and the Board finds that the conflict creates an issue of public safety, liability, or ethics.~~
- f.d. ~~If an agency wishes to host an outside provider continuing a vendor-provided training course:~~
 - i. ~~Both the agency and outside provider vendor shall comply with the provisions of subsections (A)(3)(e)(i) through (iii) subsection (A)(2); and~~
 - ii. ~~The agency shall provide the confirmation statement described under subsection (A)(3)(e) (A)(2)(b);.~~
 - iii. ~~The outside provider shall distribute to each attendee an attendance verification certificate described under subsection (A)(2)(e) and a copy of the confirmation received under subsection (A)(3)(f)(ii); and~~
 - iv. ~~Upon request, the agency shall make available to the Board the lesson plan and other information used to determine the outside provider continuing training course met the requirements of this Section.~~

4.3. Required records. A peace officer shall provide to the appointing agency a copy of all documents provided to the peace officer under subsection (A)(2)(e), (A)(2)(e), (A)(2)(f), or (A)(3)(f)(iii) (A)(2)(b). The appointing agency shall maintain the documents and make them available, upon request by the Board, for Board audit.

B. Proficiency training required:

1. ~~To retain certification, a peace officer who is not in a Sergeant or higher rank within the peace officer's appointing agency shall complete eight hours of proficiency training every three years beginning January 1, following the date the peace officer is certified.~~
2. ~~Proficiency training course standards. The provider of a proficiency training course for peace officers shall ensure that:~~
 - a. ~~The training requires physical demonstration of one or more performance objectives included in the 585-hour full-authority peace officer basic training course under R13-4-116 and demonstration of the use of judgment in the application of the physical act;~~
 - b. ~~The curriculum consists of advanced or remedial instruction on one or more of the following topic areas:~~
 - i. ~~Arrest and control tactics;~~
 - ii. ~~Tactical firearms (not the annual firearms qualification required under this Section);~~
 - iii. ~~Emergency vehicle operations;~~
 - iv. ~~Pursuit operations;~~
 - v. ~~First aid and emergency care;~~
 - vi. ~~Physical conditioning, and~~
 - vii. ~~High-risk stops;~~
 - e. ~~The instructor meets the requirements of R13-4-114(A)(2)(e);~~
 - d. ~~An attendance verification certificate, which includes a statement that the provider believes the course meets the requirements of this Section, is given to each attendee for audit purposes; and~~
 - e. ~~If the training provider is an agency, an attendance roster and lesson plan or other information sufficient to determine compliance with this Section is made available upon request by the Board for Board audit.~~
3. ~~Training providers. Courses that qualify for proficiency training credit may be conducted by the Board or an agency:~~
 - a. ~~All Board-provided proficiency training courses meet the requirements of this Section.~~
 - b. ~~Agency-provided proficiency training courses meet the requirements of this Section if all the requirements of subsection (B)(2) are met.~~
4. ~~Required records. A peace officer shall provide to the appointing agency a copy of the document provided to the peace officer under subsection (B)(2)(d). The appointing agency shall maintain and make the document available, upon request by the Board, for Board audit.~~

~~C.B.~~ Firearms qualification required. ~~A~~ In addition to the training required under subsection (A), a peace officer authorized to carry a firearm shall qualify to continue to be authorized to carry a firearm each year beginning January 1 following certification by completing a Board-prescribed firearms qualification course, using a service handgun and service ammunition, and a Board-prescribed target identification and judgment course.

1. Firearms qualification course standards.
 - a. A firearms qualification course is a course:
 - i. Prescribed under R13-4-116(E)(1), or
 - ii. Determined by the Board to measure firearms competency at least as accurately as courses prescribed under R13-4-116(E)(1).
 - b. The provider of a firearms qualification course shall ensure that the course includes:
 - i. A timed accuracy component;
 - ii. A type and style of target that is equal to, or more difficult than, targets used in a course prescribed under R13-4-116(E)(1); and
 - iii. A success criterion that is equal to, or more difficult than, criteria used in a course prescribed under R13-4-116(E)(1).
2. Firearms target identification and judgment course standards.
 - a. A firearms target identification and judgment course is a course:
 - i. Prescribed under R13-4-116(E)(1), or
 - ii. Determined by the Board to measure target identification and judgment competency at least as accurately as courses prescribed under R13-4-116(E)(1).
 - b. The provider of a firearms target identification and judgment course shall ensure that the course includes:
 - i. A timed accuracy component;
 - ii. A type and style of target discrimination test that is equal to, or more difficult than, those used in a course prescribed under R13-4-116(E)(1); and
 - iii. A success criterion that is equal to, or more difficult than, criteria used in a course prescribed under R13-4-116(E)(1).
3. The provider of a firearms qualification or firearms target identification and judgment course shall ensure that the course is taught by a firearms instructor who meets the requirements of R13-4-114(A)(2)(c).

~~D.C.~~ This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

R13-4-114. Minimum Course Requirements

A. Instructors. An academy administrator ~~or agency head~~ shall ensure that only an instructor who meets the requirements of this Section facilitates a Board-prescribed course.

1. Instructor classifications.

- a. General instructor. An individual qualified to teach topics not requiring a proficiency instructor under subsection (A)(1)(c).
- b. Specialist instructor. An individual, other than an Arizona peace officer, qualified to teach a topic in which the instructor has special expertise but who does not qualify for general instructor status.
- c. Proficiency instructor. An individual qualified to teach a topic area listed in ~~R13-4-111(B)(2)(b)~~ R13-4-116(E)(1)(h).

2. Instructor qualification standards.

- a. A general instructor shall meet the following requirements:
 - i. Have two years' experience as a certified peace officer;
 - ii. Maintain instructional competency; and
 - iii. Successfully complete a Board-sponsored instructor training course or an instructor training course that contains all of the performance objectives and demonstrations of the Board-sponsored instructor course.
- b. A specialist instructor shall meet the requirements of subsections (A)(2)(b)(i) and (A)(2)(b)(ii) and either subsection (A)(2)(b)(iii) or (A)(2)(b)(iv):
 - i. Be nominated by ~~an agency head~~ or the administrator of an academy authorized to provide a peace officer basic training course;
 - ii. Maintain instructional competency;
 - iii. Possess a professional license or certification other than a peace officer certification that relates to the topics to be taught; and
 - iv. Provide documentation to the ~~agency head~~ or academy administrator for forwarding to the Board that demonstrates the expertise and ability to enhance peace officer training in a special field.
- c. A proficiency instructor shall meet the requirements of subsections (A)(2)(c)(i) and (A)(2)(c)(ii) and either subsection (A)(2)(c)(iii) or (A)(2)(c)(iv):
 - i. Meet the requirements for general instructor;
 - ii. Maintain instructional competency;
 - iii. Successfully complete a proficiency instructor course in a topic area listed in ~~R13-4-111(B)(2)(b)~~ R13-4-116(E)(1)(h) that includes a competency assessment to

instruct in that area within the ~~585-hour~~ full-authority peace officer basic training course listed in R13-4-116(E); and

- iv. Complete a form prescribed by the Board that documents advanced training and experience in the topic area including a competency assessment to instruct in that area within the ~~585-hour~~ full-authority peace officer basic training course listed in R13-4-116(E);₂
 - d. A proficiency instructor shall meet the requirements of subsection (A)(2)(c) separately for each topic area listed in ~~R13-4-111(B)(2)(b)~~ R13-4-116(E)(1)(h) for which the proficiency instructor seeks qualification.
3. Instructional competency. An academy administrator ~~or an agency head~~ shall immediately notify the Board in writing of any instructor:
- a. Who jeopardizes the safety of students or the public,
 - b. Whose instruction violates acceptable training standards,
 - c. Who is grossly deficient in performance as an instructor, or
 - d. Who is a proficiency instructor and fails to complete satisfactorily the competency assessment to instruct in the instructor's topic area within the ~~585-hour~~ full-authority peace officer basic training course.
4. If the Board determines that an instructor fails to comply with the provisions of this Section, has an instructional deficiency, or fails to maintain proficiency, any course facilitated by the instructor does not meet the requirements of this Section.
- B. Curriculum standards.** An academy administrator or agency head shall ensure that the curriculum for a Board-prescribed course meets the following standards:
1. Curriculum.
 - a. Curriculum development employs valid, job-based performance objectives and learning activities, and promotes student, officer, and public safety, as determined by a scientifically conducted validation study of the knowledge, skills, abilities, and aptitudes needed by the affected category of Arizona peace officer.
 - b. The curriculum meets or exceeds the requirements of subsection (B)(2), unless otherwise provided in this Section.
 2. Curriculum format standard. The curriculum consists of the following:
 - a. A general statement of instructional intent that summarizes the desired learning outcome, is broad in scope, and includes long-term or far-reaching learning goals;
 - b. Lesson plans containing:
 - i. Course title,

- ii. Hours of instruction,
 - iii. Materials and aids to be used,
 - iv. Instructional strategy,
 - v. Topic areas in outline form,
 - vi. Performance objectives or learning activities,
 - vii. Success criteria, and
 - viii. Reference material;
- c. Performance objectives consisting of at least the following components:
- i. The student, which is an individual or group that performs a behavior as the result of instruction;
 - ii. The behavior, which is an observable demonstration by the student at the end of instruction that shows that the objective is achieved and allows evaluation of the student's capabilities to perform the behavior; and
 - iii. The conditions, which is a description of the important conditions of instruction or evaluation under which the student performs the behavior. Unless specified otherwise within the lesson plan, instruction and evaluation will be in written or oral form;
- d. Learning activities. A student is not required to demonstrate mastery of learning activities as a condition for successfully completing the training. Learning activities are subject areas for which performance objectives are not appropriate because either:
- i. Reliable and meaningful assessment of mastery of the material would be extremely difficult or impossible, or
 - ii. Mastery of the material is not likely to bear a direct relationship to the ability to perform entry-level peace officer job duties; and
- e. The following decimal numbering system to provide a logical means of organization:
- i. Functional area (1.0, 2.0, 3.0),
 - ii. Topic area (1.1.0, 1.2.0, 1.3.0), and
 - iii. Performance objective or learning activity (1.1.1, 1.1.2, 1.1.3).
- C. The Board shall maintain and provide upon request a copy of curricula that meet the standards of this Section.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹

TITLE 13. PUBLIC SAFETY

CHAPTER 4. PEACE OFFICER STANDARDS AND TRAINING BOARD

1. Identification of the rulemaking:

Consistent with the issues identified in the Board's five-year-review report approved by the Council on June 1, 2021, the Board is making the following changes:

- Increase the total number of hours of training required by 1.33 hours for peace officers below the rank of Sergeant and four hours for peace officers above the rank of Sergeant and require every peace officer to obtain training every year;
- Reduce the regulatory burden for police agencies and AZPOST by eliminating the distinction between continuing and proficiency training; and
- Expand the pool of available qualified training instructors, except for the firearms qualification and firearms target identification and judgment courses, by allowing instructors to be selected by the agency.

An exemption for this rulemaking from Executive Order 2021-02 was provided by Megan Fitzgerald of the Governor's Office by e-mail dated May 13, 2021. Ms. Fitzgerald approved the Board's request to submit this rule package to the Council in an e-mail dated August 8, 2022.

- a. The conduct and its frequency of occurrence that the rule is designed to change:
Until the rulemaking is completed, the increase in public safety resulting from increased peace officer training will not occur. And, the reductions in regulatory burdens from eliminating the distinction between continuing and proficiency training and increasing flexibility in choosing instructors will also not occur.
- 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:
The standards established by the Board are designed to ensure peace officers can protect public safety. When the Board identifies rule amendments that will further that goal, it's important the Board incorporate the changes into the Board's rules.
- c. The estimated change in frequency of the targeted conduct expected from the rule change:

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)).

When the rulemaking is completed, all peace officers will participate in additional training designed to protect the public and law enforcement agencies and academies will have extra flexibility regarding the training provided.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

The Board believes the economic impact of the rulemaking will be minimal for peace officers, law enforcement agencies, academies, training providers, and the Board. Although the rulemaking will result in extra hours of required training for all peace officers, the cost is minimal because training generally is provided during working hours. The cost results from redirecting the usual activity of a peace officer to the training. Changes to reduce regulatory burdens by eliminating the distinction between continuing and proficiency training and allowing all training to be provided by qualified vendors will have positive impact for all concerned.

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: Michael Giammarino, Program Administrator

Address: 2643 E. University Drive
Phoenix, AZ 85034

Telephone: 602-223-2514

E-mail: mikeg@azpost.gov

Website: azpost.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

Peace officers, law enforcement agencies, academies, providers of training courses, and the Board will be directly affected by, bear the costs of, and directly benefit from the rulemaking.

Currently, all peace officers are required to take eight hours of continuing training annually and all peace officers below the rank of Sergeant are required to take eight hours of proficiency training every three years. In this rulemaking, the requirement is changed so all peace officers, regardless of rank, take 12 hours of training annually with no distinction made between continuing and proficiency training.

There are currently 14,744 peace officers certified in Arizona and 2,934 hold a rank of at least Sergeant. The rule change means each of the 11,810 peace officers below the rank of Sergeant

will be required to obtain an additional 1.33 hours of training annually. Each of the 2,934 peace officers at or above the rank of Sergeant will be required to obtain four additional hours of training annually. The total extra hours of training for all peace officers is 27,443 annually.

Training generally is provided on the job, during working hours. The economic cost of the training results from redirecting the usual activity of peace officers to the training. Training can be provided by either the Board or a law enforcement agency using qualified instructors. These instructors may be employees of the Board or the law enforcement agency so no additional cost is incurred for the instructor to provide the proficiency training. Different training subjects incur differing costs for training materials. For example, training regarding defensive tactics incurs no material costs while training regarding firearms incurs the cost of additional ammunition. These costs may already be included in most annual budgets and should produce minimal economic impact for law enforcement agencies.

The Board incurred the cost of completing this rulemaking and will incur the cost of implementing and enforcing the rule changes. The Board has the benefit of ensuring extra protection of public safety and reducing regulatory burdens.

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:

The Board is the only state agency directly affected by the rulemaking. The Board will not need additional full-time employees to implement and enforce the rule changes.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

Political subdivisions are directly affected by the rulemaking. This includes the political subdivisions² that operate training academies and those that appoint certified peace officers. Their benefits and costs are described in item 4.

- c. Costs and benefits to businesses directly affected by the rulemaking:

Providers of peace officer training courses are businesses directly affected by the rulemaking. A training-course provider is required to ensure the course relates to law enforcement operations and peace officer functions and skills and to provide each

² A.R.S. § 41-1822(A)(4) provides that only this state and political subdivisions of this state may conduct basic peace officer training.

participant with a certificate of attendance verification. The training-course provider voluntarily incurs this cost after determining the benefit of being a training-course provider outweighs the cost.

6. Impact on private and public employment:

The rulemaking will have no impact on private or public employment.

7. Impact on small businesses³:

a. Identification of the small business subject to the rulemaking:

Training-course providers are small businesses directly affected by the rulemaking. Their costs and benefits are described in item 5.

b. Administrative and other costs required for compliance with the rulemaking:

Under R13-4-111, the provider of a training course is required to provide participants with a certificate of attendance verification. The peace officer who receives the certificate is required to provide the certificate to the appointing agency. The appointing agency maintains the certificate and makes it available to the Board for audit.

c. Description of methods that may be used to reduce the impact on small businesses:

The cost of being a provider of training courses is minimal so no method can reduce the impact and still achieve the purpose of the rulemaking. The training-course provider voluntarily incurs the cost after determining the benefit of being a training-course provider outweighs the cost.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

No private persons or consumers are directly affected by the rulemaking.

9. Probable effects on state revenues:

The rulemaking has no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

The Board concluded no less intrusive or less costly alternative method existed to achieve the intended purpose of the rulemaking. The rulemaking is not intrusive and the costs are minimal. The benefits of the rulemaking, increased public safety and reduced regulatory burdens, outweigh the costs.

³ Small business has the meaning specified in A.R.S. § 41-1001(21).

R13-4-111- Certification Retention Requirements

After review and obtaining Arizona Law Enforcement Agency input and significant support along with Board approval, AZPOST drafted the rule revision eliminating the distinction between Continuous and Proficiency Training and revising the requirement to 12-hours of required training annually for all peace officers. This provides the opportunity for law enforcement agency executives to determine their training needs and the latitude to select the training method (in-person, videos, etc.) to meet the needs of the organization and to ensure all assigned peace officers meet the 12-hour annual requirement.

The International Association of Chiefs of Police (IACP) and the International Association of Directors of Law Enforcement Standards and Training (IADLEST) do not recommend an annual number of advanced training hours for peace officers. A comparison of training hours for Arizona as compared to all other states has been provided. Based on the results of the review, thirty-one states require 20 or more hours of annual training to maintain peace officer certification and forty-five states require a minimum of 10 or more hours of training annually.

AZPOST continues to assist state law enforcement agencies with developing training, ensuring training is in line with the law enforcement profession best practices, and providing access to training as noted in a recent partnership developed between AZPOST and the US Department of Justice Community Oriented Policing Services (COPS) Office. Please see the provided COPS Office Press Release.

Out-of-State Continuing Training Requirements

Goal and Summary

Staff has surveyed other States to determine what is an industry standard, for the number of hours, of annual training which are required to maintain certification. Based on the results of the queries, thirty-one states require 20 or more hours of annual training to maintain peace officer certification and forty-five states require a minimum of 10 or more hours of training annually.

Meanwhile, New Hampshire requires a minimum of 8 hours of annual training exclusive of perishable skills (i.e. firearms, defensive tactics, driving) while Hawaii does not dictate a required number of hours, but has a list of mandatory classes that is established by the county.

Research Question

What is the industry standard for required training hours for maintaining certification?

State Breakdown

Alabama - 12 hours of continuing education approved by the commission, not including annual firearms qualification (Alabama POST Administrative Code)

Alaska - No hourly requirement for in-service, option to attend training for advanced certifications - Limitations for many agencies (financial, regional, etc) make it challenging to establish mandatory minimum baseline (Gregory Stocker - Alaska Police Standards Council)

Arkansas - 24 hours of annual continuing education, includes proficiencies and mandated duty to intervene (Arkansas Commission on Law Enforcement Standards and Training rules)

California - minimum of 24 hours every two years of continuing education training including 18 hours of perishable skills training (Firearms (4 hours), driving (4 hours), Arrest and Control (4 hours), Strategic Communications (2 hours), Use of Force (4 hours)) (Carrie Hollar - California POST)

Colorado - 24 hours of annual training (12 hours mandatory in proficiencies, 12 hours elective); Every 5 years required implicit bias, community policing, de-escalation, proper holds and restraints, and working with subjects with disabilities (in addition to annual training requirements) - No mandatory firearms qualifications - (Bob Baker - Colorado POST)

Connecticut - 60 hours of mandatory training over 3 years; body worn camera (1 hour), firearms practical (2 hours), and Use of Force training (1 hours) required annually; 26 hours of mandatory training included on a list approved by the state, 22 elective hours also selected from a pre-approved list. (William Tanner - Connecticut POST)

Delaware - 16 hours of annual training, additional training for CPR, AED, and First Aid. (Delaware Council on Police Training Regulations)

Florida - 10 hours annually, proficiency/continuing lumped together (Garrett Riggs - Florida Department of Law Enforcement)

Georgia - 20 hours of in-service training required annually (Georgia Peace Officer Standards and Training Council Rules)

Hawaii - No defined hourly requirement. Mandatory classes dictated by city and county including proficiency training. (Willy Williams - State of Hawaii Criminal Justice Division)

Idaho - 40 hours every two years; 24 hours (8 hours of firearms, 8 hours of defensive tactics, 4 hours of EVOG, 4 hours of use of force/law and legal) (New mandate for 2022) - Conducted a survey - majority of agencies 125-150 hours of in-service training (Jeff Sklar - Idaho POST)

Illinois - 40 hours of annual in-service training (Illinois Law Enforcement Standards and Training Board Administrative Code)

Indiana - 24 hours of annual training including 2 hours of firearms, 2 hours of physical tactics/use of force, and 2 hours of police vehicle operations (Indiana State Administrative Code)

Iowa - Minimum of 12 hours of annual training required **IN ADDITION TO** annual training in firearms qualification, NCIC, HazMat, Bloodborne pathogens, hazard communications, Implicit bias/de-escalation, mental health training, CPR/AED, Mandatory reporting for child and dependent adult abuse (Iowa State Administrative Code)

Kansas - 40 hours of annual training directly related to law enforcement, must be approved by the agency head or the agency head's designee; annual firearms qualification (maximum of 16 hours of firearms can be applied to 40 hour requirement); FTOs must receive 16 hours of annual FTO training; (Kansas Commission on Peace Officer Standards and Training)

Kentucky - 40 hours of required annual in-service training including firearms, legal updates, defensive tactics, vehicle operations, patrol procedures, and tactics (Kentucky Law Enforcement Council Regulations)

Louisiana - 20 hours of annual training taught by any approved instructor/vendor (8 hours of firearms, 4 hours of officer survival training, 2 hours of legal updates, 6 hours of electives) (Louisiana Peace Officer Standards and Training Council)

Maine - 20 hours of mandatory training (Firearms qualification, legal updates, Use of Force, Mental Health Response, De-escalation, Implicit Bias, etc.) in addition to 20 elective hours every two years (Maine Criminal Justice Academy website)

Maryland - 18 hours of in-service required annually (Maryland Police Standards and Training Commission - Code of Maryland Regulations)

Massachusetts - 40 hours of mandatory yearly in-service training (Massachusetts POST Commission and Massachusetts State Legislature)

Michigan - 24 hours of continuing education in subjects related to law enforcement annually (Michigan Commission on Law Enforcement Standards)

Minnesota - 48 hours every three years, 16 credits must include Crisis Intervention (6 credits), Autism (4 credits), Conflict Management (1 credit), and Implicit Bias (1 credit); Annual use of force training, emergency vehicle ops/pursuit training once every 5 years (Minnesota Board of Peace Officer Standards and Training)

Mississippi - Sliding scale based on years of service after 7/1/2004; 0-2 years requires 8 hours of annual training, 3-4 years requires 16 hours of annual training, 5 or more years requires 24 hours of annual training (Mississippi Board on Law Enforcement Officer Standards and Training Regulations)

Missouri - 24 hours of training annually including a minimum of 2 hours in legal studies, 2 hours of technical studies, 2 hours of interpersonal perspectives, 2 hours of firearms, 16 hours of electives, 1 hours of racial profiling training, 1 hours of implicit bias training, 1 hours of de-escalation training (Missouri POST website - CLEE Requirements)

Montana - 20 hours of in-service training required every two years (Montana State Department of Justice Rule and Montana POST)

Nebraska - 28 hours of annual training required for 2022 (will increase to 32 hours in 2023) not including annual firearms qualification (Nebraska Legislative Update - LB51)

Nevada - 12 hours of in-service training required annually in addition to biannual firearms qualification, annual defensive tactics refresher (control/arrest tactics, impact weapons, etc.) (Nevada POST regulations)

New Hampshire - 8 hours of annual training required exclusive of firearms qualification, use of force, first aid and CPR certificate renewal, and defensive tactics refresher training. It is recommended that officers attend training in de-escalation, implicit bias, and ethics. (New Hampshire Police Standards and Training Council website)

New Jersey - Semi-annually 8 hours of training including firearms qualification, use of force, and pursuit operations. Annual four hours of domestic violence training. Additional annual training to include bloodborne pathogens (1-2 hours), hazardous materials, right to know, breathalyzer recertification (8 hours) every three years (New Jersey Division of Criminal Justice Law Enforcement Standards)

New Mexico - Minimum of 40 hours of in-service training every two years including four hours in pursuit training, one hour of domestic violence, two hours of hate crimes, four hours of DUI training, one hour juvenile arrest training, four hours of firearms training, two hours of child abuse training, one hours of missing persons training, two hours of mental health training, thirty minutes of first aid training, two hours of legal updates, and the remaining hours are elective (New Mexico Law Enforcement Academy - required by New Mexico State Law)

New York - Does not mandate in-service training for police officers - left to individual agency discretion (New York State Division of Criminal Justice Services Rules and Regulations)

North Carolina - 24 hours of in-service training annually (North Carolina Administrative Code)

North Dakota - Minimum of 60 hours of in-service training directly related to law enforcement every three years to maintain certification (North Dakota POST)

Ohio - 24 hours of annual training required for maintaining certification (Ohio Peace Officer Training Commission - Ohio State Administrative Code)

Oklahoma - 25 hours of annual training including 2 hours of training on mental health issues and excluding firearms qualifications (Oklahoma Council on Law Enforcement Education and Training)

Oregon - 84 hours of training every three years including CPR, First Aid, 8 hours of Firearms training or use of force annually, one hours of ethics annually, three hours of mental health/crisis intervention annually (Oregon Criminal Justice Training and Certification Division - Certified Officer Maintenance Requirements)

Pennsylvania - 12 hours of annual in-service training including legal updates, use of force, control tactics, bias training (MPOETC Administrative Code)

Rhode Island - 40 hours of required training annually (Rhode Island Legislature 42-28.2.1-21)

South Carolina - 40 hours of in-service training per three year cycle; annual training must include legal updates, firearms qualification, emergency vehicle response, and any federal mandates (~13 hours annually) (South Carolina Regulations)

South Dakota - Minimum of 40 hours over a two year period including firearms qualification, two hours of crisis intervention training, legal updates, human behavior, and domestic violence (South Dakota Attorney General - South Dakota Administrative Rules)

Tennessee - Minimum of 40 hours of in-service training annually including child sexual abuse training, emergency vehicle operations, mental health training, firearms qualification, de-escalation, duty to intervene, officer wellness, community policing, and public assembly interaction (Tennessee POST Commission Rules)

Texas - Mandatory 40 hours of in-service training over a two year period to including legislative updates, cultural diversity, crisis intervention, and de-escalation (Texas Commission on Law Enforcement website)

Utah - Mandatory 40 hours of annual training with a minimum of 16 hours in de-escalation, arrest control, and crisis intervention/mental health (Utah POST Rules)

Vermont - Minimum of 25 hours of in-service training for full-time officers and 30 hours of in-service training for part-time officers annually including firearm recertification, first aid, and use of force training (Vermont State Legislature)

Virginia - 40 hours of annual training including cultural diversity, legal training, career development, firearms qualifications (Virginia Administrative Code)

Washington - 24 hours of in-service training annually (Washington State Legislature 139-05-300)

West Virginia - 16 hours of annual in-service training exclusive of firearms qualifications (West Virginia State Legislature 149-2 - Law Enforcement Training and Certification Standards)

Wisconsin - 24 hours of annual in-service training including firearms qualification (annually) and vehicle pursuit training (biennially) (Wisconsin Law Enforcement Standards Board Policy and Procedures)

Wyoming - Professional Peace Officers shall complete 40 hours of continuing training every two years to maintain their certification including 10 hours in perishable skill training (firearms, defensive tactics, use of force, search and seizure, emergency vehicle operations, CPR, Crisis Intervention Training and any other training mandated by the POST director) (Wyoming POST rules and regulations)

Key

Green - Response received matches desired direction

Red - Response received does not match desired direction



PRESS RELEASE

**For Immediate Release
July 20, 2022**

Contact: COPS Office Public Affairs
Email: cops.office.public.affairs@usdoj.gov
Phone: (202) 514-9079

COPS Office Announces Training Partnership with Arizona Peace Officer Standards and Training Board

WASHINGTON, D.C. – The Department of Justice’s Office of Community Oriented Policing Services (COPS Office) today announced a partnership with the Arizona Peace Officer Standards and Training Board (AZPOST) to promote free training.

AZPOST has agreed to award continuous training (in-service) credit for all certificate-awarding courses on the COPS Training Portal in recognition of the high quality of the eLearning courses developed by the COPS Office. Arizona is the first state to guarantee credit for these courses, and has agreed to continue to award credit for all new courses launched on the COPS Training Portal in the future.

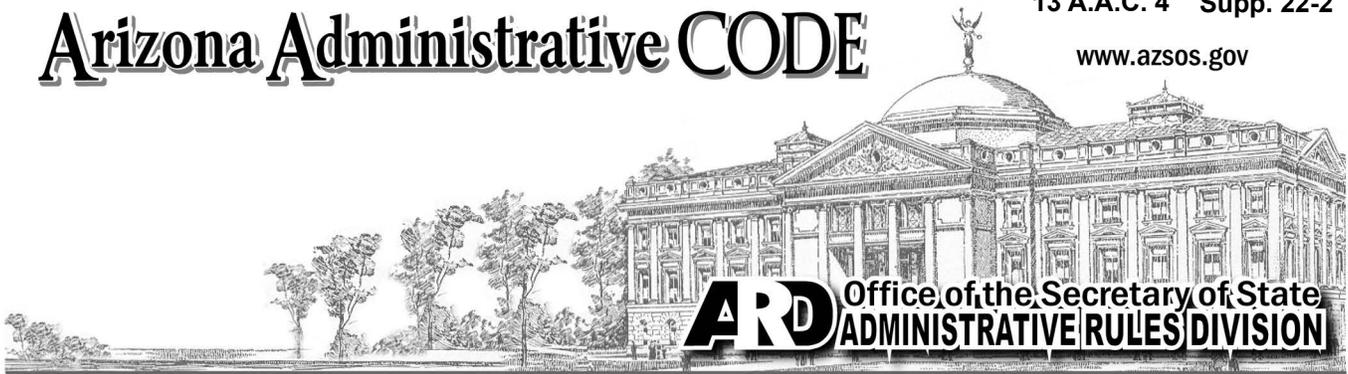
“A partnership with AZPOST increases the awareness and value of eLearning courses offered through the COPS Training Portal,” said Robert Chapman, Acting Director of the COPS Office. “The Portal is a cornerstone of our training program. It exists to directly support agency training efforts by providing a no-cost means for entire law enforcement organizations, training academies, and individual officers to access high-quality and engaging materials and information to enhance the training already being conducted at the local level. I applaud the leadership demonstrated by Matt Giordano, AZPOST’s Executive Director, as he works to provide peace officers throughout Arizona options for training on diverse and timely topics. The COPS Office looks forward to working with other POSTs across the country to bring these courses to law enforcement officers who need them.”

The COPS Training Portal (copstrainingportal.org) was launched in 2017, and now boasts 27 training courses and more than a dozen resources on a wide variety of law enforcement topics, with more trainings constantly in development. The COPS Office is dedicated to providing high-quality training to the field as part of its mission to advance the practice of community policing in the United States.

The COPS Office is the federal component of the Department of Justice responsible for advancing community policing nationwide. The only Department of Justice agency with policing in its name, the COPS Office was established in 1994 and has been the cornerstone of the

nation's crime fighting strategy with grants, a variety of knowledge resource products, and training and technical assistance. Through the years, the COPS Office has become the go-to organization for law enforcement agencies across the country and continues to listen to the field and provide the resources that are needed to reduce crime and build trust between law enforcement and the communities served. The COPS Office has invested more than \$14 billion to advance community policing, including grants awarded to more than 13,000 state, local and tribal law enforcement agencies to fund the hiring and redeployment of more than 135,000 officers.

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TITLE 13. PUBLIC SAFETY

CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

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

April 1, 2022 through June 30, 2022

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Questions about these rules? Contact:

Department: AZPOST
 Address: 2643 E. University Dr.
 Phoenix, AZ 85034
 Website: www.azpost.gov
 Name: Michael Giammarino, Program Administrator
 Telephone: (602) 223-2514
 Email: mikeg@azpost.gov

The release of this Chapter in Supp. 22-2 replaces Supp. 20-4, 1-19 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 2022 is cited as Supp. 22-1. 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

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 13. PUBLIC SAFETY
CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

Authority: A.R.S. § 41-1822(A) et seq.

Supp. 22-2

The Arizona Law Enforcement Officer Advisory Council's name was changed by Laws 1994, Ch. 324, § 1, effective July 17, 1994. All references to the Council were changed to reflect the new Board. (Supp. 94-3).

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CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

ARTICLE 1. GENERAL PROVISIONS

R13-4-101. Definitions

In this Article, unless the context otherwise requires:

“Academy” means an entity that conducts the Board-prescribed basic training courses for full-authority or specialty peace officers.

“Adderall,” as used in R13-4-105, means a combination drug containing salts of amphetamine that acts as a central nervous system stimulant. The combination may include amphetamine, methamphetamine, methylphenidate, dextroamphetamine, levoamphetamine, or other stimulants.

“Agency” means a law enforcement entity empowered by the state of Arizona.

“Appointment” means the selection by an agency of an individual to be a peace officer or peace officer trainee.

“Approved training program” means a course of instruction that meets Board-prescribed course requirements.

“Board” means the Arizona Peace Officer Standards and Training Board.

“Board-trained physician” means an occupational medicine specialist or a physician who has attended a Board course on peace officer job functions.

“Cancellation” means the annulment of certified status without prejudice to reapply for certification.

“Certified” means approved by the Board as being in compliance with A.R.S. Title 41, Chapter 12, Article 8 and this Chapter.

“CFE” means the Board-approved Comprehensive Final Examination that measures mastery of the knowledge and skills taught in the Board approved full-authority peace officer basic training course.

“Denial” means the refusal of the Board to grant certified status. The Board’s denial may be temporary with an opportunity to reapply for certified status or permanent.

“Dangerous drug or narcotic” means a substance identified in A.R.S. § 13-3401 as being a dangerous drug or narcotic drug.

“Full-authority peace officer” means a peace officer whose authority to enforce the laws of this state is not limited by this Chapter.

“Illegal” means in violation of federal or state statute, rule, or regulation.

“Lapse” means the expiration of certified status.

“Open enrollee” means an individual who is admitted to an academy but is not appointed by an agency.

“Peace officer” has the meaning in A.R.S. § 1-215.

“Peace officer trainee” means an individual recruited and appointed by an agency to attend an academy.

“Physician” means an individual licensed to practice allopathic or osteopathic medicine in this or another state.

“Resolve-in-the-future or RF” means a designation assigned by the Board regarding alleged misconduct of an inactive peace officer and requires an agency to resolve the alleged misconduct before the agency may appoint the peace officer.

“Restriction” means the Board’s limitation on duties allowed to be performed by a certified peace officer.

“Revocation” means the permanent withdrawal of certified status.

“Service ammunition” means munitions that perform equivalently in all respects when fired during training or qualification to those carried on duty by a peace officer.

“Service handgun” means the specific handgun or equivalent that a peace officer carries for use on duty.

“Specialty peace officer” means a peace officer whose authority is limited to enforcing specific sections of the Arizona Revised Statutes or *Arizona Administrative Code*, as specified by the appointing agency’s statutory powers and duties.

“Success criteria” means a numerical statement that establishes the performance needed for an individual to demonstrate competency in a knowledge, task, or ability required by this Chapter.

“Suspension” means the temporary withdrawal of certified status.

“Termination” means the end of employment or service with an agency as a peace officer through removal, discharge, resignation, retirement, or otherwise.

“Vendor” means an entity other than the Board or an agency that makes training available to peace officers.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). Amended effective August 6, 1991 (Supp. 91-3). References to “Council” changed to “Board” (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective December 6, 2020 (Supp. 20-4). Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), with an immediate effective date of May 4, 2022 (Supp. 22-2).

R13-4-102. Internal Organization and Control of the Board

- A. Scheduled meetings. The Chair, in consultation with the Board, shall set regular meeting dates of the Board.
- B. Special meetings. Except in the case of an emergency meeting declared by the Governor or the Chair, the Chair shall give at least five days’ written notice of a special meeting to each member of the Board.
- C. Subcommittees. The Chair may appoint subcommittees to inquire into any matter of Board interest. Each subcommittee shall report its findings, conclusions, and recommendations to the Board, in a manner directed by the Chair.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to “Council” changed to “Board” (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking at 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-103. Certification of Peace Officers

- A. Certified status mandatory. An individual who is not certified by the Board or whose certified status is inactive shall not function as a peace officer or be assigned the duties of a peace officer by an agency, except as provided in subsection (B).
- B. Sheriffs who are elected are exempt from the requirement of certified status.

CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

- C. An individual shall satisfy the minimum qualifications and training requirements to receive certified status.
- D. Peace officer categories. The categories for which certified status may be granted are:
1. Full-authority peace officer, and
 2. Specialty peace officer.
- E. Application for certification. An individual who seeks to be certified as a peace officer shall make application as follows:
1. Submit to an agency an application that contains all documents required by R13-4-105, R13-4-106(A) and (B), and R13-4-107;
 2. Obtain an appointment from the agency; and
 3. Obtain either a certificate of graduation from a Board-prescribed Peace Officer Basic Course or a certificate of successful completion of the waiver of training process prescribed by R13-4-110(D).
- F. An open enrollee shall obtain an appointment from an agency within one year after graduating from a Board-prescribed Peace Officer Basic Course.
1. If more than one year but less than three years elapse after graduation from a Board-prescribed Peace Officer Basic Course before an open enrollee obtains an appointment from an agency, the open enrollee shall again take the CFE required under R13-4-110 and satisfactorily perform the practical demonstrations of proficiency in physical conditioning, vehicle operations, pursuit operations, and firearms, including firearms qualifications, as required under R13-4-116(E)(1).
 2. If more than three years elapse after graduation from a Board-prescribed Peace Officer Basic Course, an open enrollee shall again graduate from the Board-prescribed Peace Officer Basic Course before obtaining an appointment from an agency.
- G. Establishing or enforcing qualifications, standards, or training requirements. The Board may waive in whole or in part any provision of this Article upon a finding that the best interests of the law enforcement profession are served and the public welfare and safety is not jeopardized by the waiver. The Board may place restrictions or requirements on a peace officer as a condition of certified status.
- H. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).
1. No more than 30 days have elapsed since the peace officer's termination, and
 2. The change is to a category for which the officer is qualified under R13-4-110(A).
- C. Reinstatement by an agency following termination by the agency for misconduct and physical separation from the agency for more than 30 days. Before reinstating a peace officer who was terminated for misconduct and physically separated from service for more than 30 days, the agency shall conduct the following background investigation and submit the results to the Board. The agency shall conduct the background investigation even if the peace officer's official date of reinstatement is within the 30 days of physical separation from the agency:
1. A personal history statement as described in R13-4-106(A);
 2. A background interview regarding the time physically separated from the agency;
 3. A polygraph examination as described in R13-4-106(C)(8) regarding the time physically separated from the agency and including:
 - a. Were you involved in any criminal activity while physically separated from the agency;
 - b. Did you have an encounter with law enforcement while physically separated from the agency;
 - c. Was there a change in your medical condition while physically separated from the agency;
 - d. Questions to update the information required under R13-4-105(A)(6) and (A)(9) through (15) and R13-4-106(C)(2) and (C)(4); and
 - e. Is all the information you provided true, complete, and accurate.
- D. Inactive status. Certified status of a peace officer becomes inactive upon termination.
- E. Lapse of certified status. The certified status of a peace officer lapses after three consecutive years on inactive status.
- F. Reinstatement from inactive status. A peace officer whose certified status is inactive and has not lapsed may have certification reinstated if the requirements of R13-4-105 are met for the new appointment, and if appointed:
1. In the same peace officer category, or;
 2. As a specialty peace officer from inactive status as a full-authority peace officer.
- G. Active status as a specialty peace officer does not prevent lapse of certified status as a full-authority peace officer.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1).
Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, filed in the Office of the Secretary of State on February 8, 2016; effective six months after the date filed in accordance with A.R.S. § 1823 (Supp. 16-1).
Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), effective six months after filing with the Secretary of State as required under A.R.S. § 41-1823(A); filed May 4, 2022, effective date November 4, 2022 (Supp. 22-2).

R13-4-104. Peace Officer Category Restrictions

- A. Specialty peace officer. A specialty peace officer has only the authority specified in R13-4-101.
- B. Peace officer category change. A certified peace officer may be appointed to another peace officer category within the same agency without the background investigation and medical examination required in R13-4-105, R13-4-106, and R13-4-107 when these requirements were previously satisfied for appointment if:

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1).
Amended effective August 6, 1991 (Supp. 91-3).
Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).
Amended by final rulemaking at 26 A.A.R. 2745, effective December 6, 2020 (Supp. 20-4). Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), effective July 3, 2022 (Supp. 22-2).

R13-4-105. Minimum Qualifications

- A. Except as provided in subsection (C) or (D), an individual shall meet the following minimum qualifications before being appointed to or attending an academy:
1. Be a United States citizen;
 2. Be at least 21 years of age. An individual may attend an academy if the individual will be 21 years of age before graduating;

CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

3. Meet one of the following education standards:
 - a. Have a diploma from a high school recognized by the department of education of the jurisdiction from which the diploma is issued,
 - b. Have successfully completed a General Education Development (G.E.D.) examination,
 - c. Have a homeschool diploma or certificate of completion that is recognized as the equivalent of a high school diploma by the jurisdiction from which the homeschool diploma or certificate is issued,
 - d. Have a diploma, certificate of completion, or transcripts issued by a private school in Arizona that includes the individual's name and a signed affirmation of the school administrator that the individual received the equivalent of a high school education, or
 - e. Have a degree from an institution of higher education accredited by an agency recognized by the U.S. Department of Education;
 4. Undergo a complete background investigation that meets the standards of R13-4-106. An individual shall not begin an academy until the agency has completed the background investigation requirements at R13-4-106(C)(1), (C)(2), and (C)(4) through (9). However, an individual may begin an academy before the results of the fingerprint query referenced in R13-4-106(C)(3) are returned. The academy shall not graduate the individual and the Board shall not reimburse the academy for the individual's training expenses until a qualifying background investigation report, as specified in R13-4-106(C)(9), is completed;
 5. Undergo a medical examination that meets the standards of R13-4-107 within one year before appointment. An agency may make a conditional offer of appointment before the medical examination. If the medical examination is conducted more than 180 days before appointment, the individual shall submit a written statement indicating that the individual's medical condition has not changed since the examination;
 6. Not have been convicted of a felony or any offense that would be a felony if committed in Arizona;
 7. Not have been dishonorably discharged from the United States Armed Forces;
 8. Not have been previously denied certified status, have certified status revoked, or have current certified status suspended, or have voluntarily surrendered certified status in lieu of possible disciplinary action in this or any other state if the reason for denial, revocation, suspension, or possible disciplinary action was or would be a violation of R13-4-109(A) if committed in Arizona;
 9. Not have illegally, as defined in R13-4-101, possessed, produced, cultivated, or transported marijuana for sale or sold marijuana;
 10. Not have illegally, as defined in R13-4-101, possessed or used marijuana for any purpose within the past two years;
 11. Not have illegally sold, produced, cultivated, or transported for sale a dangerous drug or narcotic;
 12. Not have illegally used a dangerous drug or narcotic, other than marijuana, for any purpose within the past seven years;
 13. Not have a pattern of abuse of prescription medication;
 14. Undergo a polygraph examination that meets the requirements of R13-4-106, unless prohibited by law;
 15. Not have been convicted of or adjudged to have violated traffic regulations governing the movement of vehicles with a frequency within the past three years that indicates a disrespect for traffic laws or a disregard for the safety of others on the highway;
16. Read the code of ethics in subsection (E) and affirm by signature the individual understands and agrees to abide by the code.
- B.** To determine whether an individual's possession or use of marijuana, or a dangerous drug or narcotic disqualifies the individual from being appointed or attending an academy, the Board shall use the following standards:
1. Marijuana.
 - a. All forms of marijuana, including THC extracts, cannabis, hashish, marijuana extracts, and marijuana edibles, and all forms of use will be treated the same;
 - b. The individual has not illegally possessed or used marijuana within the two years before appointment as a peace officer; and
 - c. The individual has never illegally possessed or used marijuana as a peace officer;
 2. Dangerous drugs, hallucinogens, narcotics, and prescription drugs containing an active ingredient that is a narcotic or dangerous drug.
 - a. The individual has not illegally possessed or used any of these substances:
 - i. Within the seven years before appointment as a peace officer;
 - ii. More than a total of five times for all substances combined;
 - iii. More than one time for all substances combined since turning 21 years of age; and
 - iv. As a peace officer;
 - b. Dangerous drugs. All dangerous drugs, including methamphetamine, amphetamine, speed, spice, and bath salts will be treated the same;
 - c. Hallucinogens. All hallucinogens, including peyote, mushrooms, ecstasy, lysergic acid diethylamide (LSD), ketamine, mescaline, and phencyclidine (PCP) will be treated the same;
 - d. Narcotics. All narcotics, including cocaine, heroin, and opioids will be treated the same; and
 - e. Prescription medications. All prescription medications containing an active ingredient that is a narcotic or dangerous drug will be treated the same. Possession or use for recreational purposes of a prescription medication containing an active ingredient that is a narcotic or dangerous drug is disqualifying under subsection (B)(2);
 3. Steroids.
 - a. All steroids, including anabolic-androgenic steroids and corticosteroids will be treated the same;
 - b. The individual has not illegally possessed or used a steroid within the three years before appointment as a peace officer; and
 - c. The individual has never illegally possessed or used a steroid as a peace officer;
 4. Adderall.
 - a. All uses of Adderall, except as prescribed by a physician, will be treated the same;
 - b. The individual has not possessed or used Adderall, except as prescribed by a physician, within the three years before appointment as a peace officer, and
 - c. The individual has never possessed or used Adderall, except as prescribed by a physician, as a peace officer; and
 5. Over-the counter products containing cannabidiol (CBD). The Board does not consider possession or use of over-

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the-counter products containing CBD, as allowed under federal and state law, as disqualifying an individual from appointment as a peace officer.

- C. An agency head who wishes to appoint an individual whose illegal possession or use of marijuana or a dangerous drug or narcotic is determined to be disqualifying under this Section may petition the Board for a determination that, given the unique circumstances of the individual's possession or use, the use should not be disqualifying. The petition shall:
1. Specify the type of drugs illegally possessed or used, the number of uses, the age at the time of each possession or use, the method by which the information regarding illegal possession or use of drugs came to the agency's attention, and any attempt by the agency head to verify the accuracy of the information; and
 2. State the factors the agency head wishes the Board to consider in making its determination. These factors may include:
 - a. The duration of possession or use,
 - b. The motivation for possession or use,
 - c. The time elapsed since the last possession or use,
 - d. How the drug was obtained,
 - e. How the drug was ingested,
 - f. Why the individual stopped possessing or using the drug, and
 - g. Any other factor the agency head believes is relevant to the Board's determination.
- D. An agency head who wishes to appoint an individual whose conduct is grounds to deny certification under R13-4-109 may petition the Board for a determination that the otherwise disqualifying conduct constitutes juvenile indiscretion. The petition shall:
1. Specify the nature of the conduct, the number of times the conduct occurred, the method by which information regarding the conduct came to the agency's attention, and any attempt by the agency head to verify the accuracy of the information; and
 2. Include sufficient information for the Board to determine that all of the following are true:
 - a. The conduct occurred when the individual was younger than age 18;
 - b. The conduct occurred more than 10 years before application for appointment;
 - c. The individual has consistently exhibited responsible, law-abiding behavior between the time of the conduct and application for appointment;
 - d. There is reason to believe that the individual's immaturity at the time of the conduct contributed substantially to the conduct;
 - e. There is evidence that the individual's maturity at the time of application makes reoccurrence of the conduct unlikely; and
 - f. The conduct was not so egregious that public trust in the law enforcement profession would be jeopardized if the individual is certified.
 3. If the Board finds that the information submitted is sufficient for the Board to determine that the factors listed in subsection (D)(2) are true, the Board shall determine that the conduct constituted juvenile indiscretion and grant appointment.
- E. Code of Ethics. Because the people of the state of Arizona confer upon all peace officers the authority and responsibility to safeguard lives and property within constitutional parameters, a peace officer shall commit to the following Code of Ethics and shall affirm the peace officer's commitment by signing the Code.

"I will exercise self-restraint and be constantly mindful of the welfare of others. I will be exemplary in obeying the laws of the land and loyal to the state of Arizona and my agency and its objectives and regulations. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept secure unless revelation is necessary in the performance of my duty.

I will never take selfish advantage of my position and will not allow my personal feelings, animosities, or friendships to influence my actions or decisions. I will exercise the authority of my office to the best of my ability, with courtesy and vigilance, and without favor, malice, ill will, or compromise. I am a servant of the people and I recognize my position as a symbol of public faith. I accept it as a public trust to be held so long as I am true to the law and serve the people of Arizona."

- F. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1).
 Amended effective August 6, 1991 (Supp. 91-3).
 Amended effective January 13, 1993; filed July 13, 1992 (Supp. 92-3). References to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective July 10, 2006 (Supp. 06-1). Amended by final rulemaking at 22 A.A.R. 555, filed in the Office of the Secretary of State on February 8, 2016; effective six months after the date filed in accordance with A.R.S. § 1823 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective six months after filing with the Secretary of State as required under A.R.S. § 41-1823(A); filed October 7, 2020, effective date April 7, 2021 (Supp. 20-4). Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), effective six months after filing with the Secretary of State as required under A.R.S. § 41-1823(A); filed May 4, 2022, effective date November 4, 2022 (Supp. 22-2).

R13-4-106. Background Investigation Requirements

- A. Personal history statement. An individual who seeks to be appointed shall complete and submit to the appointing agency a personal history statement on a form prescribed by the Board before the start of a background investigation. The Board shall use the answers to questions contained in the personal history statement to determine whether the individual is eligible for certified status as a peace officer. The Board shall ensure that the questions concern whether the individual meets the minimum requirements for appointment, has engaged in conduct or a pattern of conduct that would jeopardize the public trust in the law enforcement profession, and is of good moral character.
- B. Investigative requirements for the applicant. To assist with the background investigation, an individual who seeks to be appointed shall provide the following:
1. Proof of United States citizenship. A copy of a birth certificate, United States passport, or United States naturalization papers is acceptable proof.
 2. Proof of education. A copy of a diploma, certificate, or transcript is acceptable proof.
 3. Record of any military discharge. A copy of the Military Service Record (DD Form 214 or NGB Form 22), which documents the character of service, separation code, and reenlistment code, is acceptable proof.

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4. Personal references. The names and addresses of at least three people who can provide information as personal references.
 5. Previous employers or schools attended. The names and addresses of all employers and schools attended within the previous five years.
 6. Residence history. The complete address for every location at which the individual has lived in the last five years.
- C. Investigative requirements for the agency. A complete background investigation includes the following inquiries and a review of the returns to determine that the individual seeking appointment meets the requirements of R13-4-105, and that the individual's personal history statement is accurate and truthful. For each individual seeking to be appointed, the appointing agency shall:
1. Query all the law enforcement agency records in jurisdictions listed in subsections (B)(5) and (6);
 2. Query the motor vehicle division driving record from any state listed in subsections (B)(5) and (6);
 3. Complete and submit a Fingerprint Card Inventory Sheet to the Federal Bureau of Investigation and Arizona Department of Public Safety for query;
 4. Query the National Crime Information Center/Interstate Identification Index (NCIC/III), and the Arizona Criminal Information Center/Arizona Computerized Criminal History (ACIC/ACCH), or the equivalent for each state listed in subsections (B)(5) and (6);
 5. Contact all personal references and employers listed in subsections (B)(4) and (5) and document the answers to inquiries concerning whether the individual meets the standards of this Section;
 6. Query the Board regarding the individual's certification status, reports of alleged misconduct by the individual, and whether the individual has a Board case with an RF designation;
 7. Query all Arizona law enforcement agencies where the individual was appointed or applied for appointment as a peace officer regarding records maintained under R13-4-108(C);
 8. Administer a polygraph examination, unless prohibited by law. The results shall include a detailed report of the pre-test interview and any post-test interview and shall cover responses to all questions that concern:
 - a. Minimum standards for appointment as required by R13-4-105,
 - b. Truthfulness on the personal history statement,
 - c. Commission of any crimes; and
 - d. Any Board case with an RF designation;
 9. If any of the information under subsections (C)(1) through (8) is more than a year old, the agency shall administer another polygraph examination and query the individual regarding any changes in the information previously received under subsections (C)(1) through (8); and
 10. If the results of the background investigation show that the individual meets minimum qualifications for appointment, has not engaged in conduct or a pattern of conduct that would jeopardize public trust in the law enforcement profession, and is of good moral character, complete a report that attests to those findings. If the agency is unable to obtain all information required under subsections (C)(1) through (9), include in the report a description of the missing information and efforts made to obtain it.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). Amended effective January 13, 1993; filed July 13, 1992 (Supp. 92-3). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective December 6, 2020 (Supp. 20-4). Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), effective July 3, 2022 (Supp. 22-2).

R13-4-107. Medical Requirements

- A. Medical, physical, and mental eligibility for certification.
1. An agency may appoint an individual if the individual meets the minimum qualifications in R13-4-105 and is able to perform all the essential functions of the job of peace officer effectively, with or without reasonable accommodation, without creating a reasonable probability of substantial harm to the individual or others.
 2. If an agency wishes to appoint an individual who is unable to perform all the essential functions of the job of peace officer effectively, the agency may seek a restricted certification for the individual. The Board shall determine whether placing restrictions or requirements on the individual as a condition of certification will enable the individual to perform the essential functions authorized within the restriction without creating a reasonable probability of harm to the individual or others.
- B. Medical examination process.
1. Medical history. An individual applying to be appointed shall provide to the examining, board-trained, physician a written statement of the individual's medical history that includes past and present diseases, illnesses, symptoms, conditions, injuries, functionality, surgeries, procedures, immunizations, medications, and psychological information.
 2. Medical examination.
 - a. The examining, board-trained, physician shall not delegate any part of the medical examination process to another person;
 - b. The examining, board-trained, physician shall review the medical history statement and take an additional verbal history from the applicant;
 - c. The examining, board-trained, physician shall conduct a physical examination consistent with the standard of care for occupational medical examinations;
 - d. The examining, board-trained, physician shall order tests, obtain medical records, and require specialist or functional examinations and evaluations that the examining physician deems necessary to determine the applicant's ability to perform all the essential functions of the job of peace officer;
 - e. The examining, board-trained, physician shall make a report to the agency and provide a:
 - i. Summary of the examination;
 - ii. Description of any significant medical findings;
 - iii. Description of any limitation to the ability to perform the essential functions of the job of a peace officer; and
 - iv. Medical opinion about the applicant's ability to perform the essential functions of the job of peace officer, with or without reasonable accommodations; and
 - f. The examining, board-trained, physician shall consult with the agency, upon request, about the report

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and the efficacy of any accommodations the agency deems reasonable.

- C. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, filed in the Office of the Secretary of State on February 8, 2016; effective six months after the date filed in accordance with A.R.S. § 1823 (Supp. 16-1).

R13-4-108. Agency Records and Reports

- A. Agency reports. On forms prescribed by the Board, an agency shall submit:
1. A report by the agency head attesting that the requirements of R13-4-105 are met for each individual appointed. The report shall be submitted to the Board before an individual attends an academy or performs the duties of a peace officer.
 2. A report of the termination of a peace officer. The report shall be submitted to the Board within 15 days of the termination and include:
 - a. The nature of the termination and effective date;
 - b. A detailed description of any termination for cause; and
 - c. A detailed description of, and supporting documentation for, any cause existing for suspension or revocation of certified status.
- B. Agency records. An agency shall make its records available on request by the Board or staff. The agency shall maintain the following for each individual for whom certification is sought:
1. An application file that contains all of the information required in R13-4-103(E) and R13-4-106(C) for each individual appointed for certification as a peace officer;
 2. A copy of reports submitted under subsection (A);
 3. A signed copy of the affirmation to the Code of Ethics required under R13-4-105;
 4. A written report of the results of a completed or partially completed background investigation and all written documentation obtained or recorded under R13-4-106, including information obtained regarding a Board case with an RF designation;
 5. A completed medical report required under R13-4-107; and
 6. A record of all continuing training, proficiency training, and firearms qualifications conducted under R13-4-111.
- C. Record retention. An agency shall maintain the records required by this Section as follows:
1. For applicants investigated under R13-4-106 who are not appointed: three years;
 2. For applicants who are appointed: five years from the date of termination, except records retained under subsection (B)(6) shall be retained for three years following completion of training; and
 3. Reports of a polygraph examination given under R13-4-106(C)(6) shall be maintained in accordance with state law.
- D. An agency shall make the records maintained under subsection (C) available, on request, to another agency completing a background investigation under R13-4-106(C).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3).

Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective December 6, 2020 (Supp. 20-4).

R13-4-109. Denial, Revocation, Suspension, or Cancellation of Peace Officer Certified Status

- A. Causes for denial, suspension, or revocation. The Board may deny certified status or suspend or revoke the certified status of a peace officer for:
1. Failing to satisfy a minimum qualification for appointment listed in R13-4-105;
 2. Willfully providing false information in connection with obtaining or reactivating certified status;
 3. Having a medical, physical, or mental disability that substantially limits the individual's ability to perform the duties of a peace officer effectively, or that may create a reasonable probability of substantial harm to the individual or others, for which a reasonable accommodation cannot be made;
 4. Violating a restriction or requirement for certified status imposed under R13-4-109.01, R13-4-103 (G), or R13-4-104;
 5. Engaging in behavior that would be disqualifying under R13-4-105(B);
 6. Using or being under the influence of spirituous liquor on duty without authorization;
 7. Committing a felony, an offense that would be a felony if committed in this state, or an offense involving dishonesty, unlawful sexual conduct, or physical violence;
 8. Committing malfeasance, misfeasance, or nonfeasance in office;
 9. Performing the duties or exercising the authority of a peace officer without having active certified status;
 10. Making a false or misleading statement, written or oral, to the Board or its representative;
 11. Failing to furnish information in a timely manner to the Board or its representative on request; or
 12. Engaging in any conduct or pattern of conduct that tends to disrupt, diminish, or otherwise jeopardize public trust in the law enforcement profession.
- B. Cause for cancellation. The Board shall cancel the certified status of a peace officer if the Board determines that the individual was not qualified when certified status was granted, and revocation is not warranted under subsection (A).
- C. Cause for mandatory revocation. Upon the receipt of a certified copy of a judgment of a felony conviction of a peace officer, the Board shall revoke certified status of the peace officer.
- D. Action by the Board. Upon receipt of information that cause exists to deny certification, or to cancel, suspend, or revoke the certified status of a peace officer, the Board shall determine whether to initiate action regarding the retention of certified status. The Board may conduct additional inquiries or investigations to obtain sufficient information to make a fair determination.
- E. Notice of action. The Board shall notify the affected individual of Board action to initiate proceedings regarding certified status for a cause listed under subsection (A) or (B). The notice shall be served as required by A.R.S. § 41-1092.04 and specify the cause for the action. Within 30 days after receiving the notice, the individual named in the notice shall advise the Board or its staff in writing whether a hearing is requested. Failure to file a written request for hearing at the Board offices within 30 days after receiving the notice constitutes a waiver of the right to a hearing.

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- F. Effect of agency action. Action by an agency or a decision resulting from an appeal of that action does not preclude action by the Board to deny, cancel, suspend, or revoke the certified status of a peace officer.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective December 6, 2020 (Supp. 20-4).

R13-4-109.01. Restriction of Certified Peace Officer Status: Training or Qualification Deficiencies

- A. Restricted status. The Board shall restrict certified status if a peace officer fails to satisfy the requirements of R13-4-111.
1. The Board shall consider reports of training or qualification deficiencies at a regularly scheduled public meeting and provide a peace officer alleged to have a training or qualification deficiency the opportunity to be heard without referral to an independent hearing officer. At the public meeting, the Board shall determine only whether the peace officer has successfully completed the required training or qualification and can produce documentation to verify it.
 2. The Board shall leave a restriction in effect until the training or qualification requirement is met and the peace officer files written verification of the training or qualification with the Board.
 3. The Board shall provide notice of restriction or reinstatement following a restriction under this Section by regular mail to the peace officer at the employing agency address. The Board shall provide a copy of the restriction or reinstatement notice by regular mail to the agency head.
- B. Firearms qualification. If a peace officer fails to satisfy R13-4-111(C), the peace officer shall not carry or use a firearm on duty.
- C. Continuing and proficiency training. If a peace officer fails to satisfy R13-4-111(A) or (B), the peace officer shall not engage in enforcement duties, carry a firearm, wear or display a badge, wear a uniform, make arrests, perform patrol functions, or operate a marked police vehicle.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-110. Basic Training Requirements

- A. Required training for certified status. The Board shall not certify and an individual shall not perform the duties of a peace officer until the individual successfully completes basic training as follows:
1. To be certified as a full-authority peace officer, an individual shall complete the Board approved full-authority peace officer basic training course, specified in R13-4-116, at an academy and pass the CFE.
 - a. The Board shall ensure the CFE is administered in a secure manner.
 - b. The Board shall ensure that the CFE is administered during the final two weeks of the full-authority peace officer basic training course.
 - c. An individual passes the CFE by achieving a score of at least 70 percent on each of the three blocks of the CFE when each block is scored separately.
 - d. An individual who fails one or more blocks of the CFE may retake the failed block one time before the individual is scheduled to graduate from the academy.
 - e. An individual who fails a retake of a block of the CFE, as described in subsection (A)(1)(d), may retake the failed block once more within 60 days from the original testing date if the individual remains appointed by the original appointing agency or enrolled in the academy.
 - f. An individual who fails a second retake of a block of the CFE, as described in subsection (A)(1)(e), may pursue certification only by repeating the Board approved full-authority peace officer basic training course.
 - g. An agency head is not required to continue to appoint an individual during the 60 days permitted for a second retake of a failed block of the CFE, as described in subsection (A)(1)(e).
 2. To be certified as a specialty peace officer, an individual shall complete a Board-prescribed specialty peace officer basic training course or the Board approved full-authority peace officer basic training course, specified in R13-4-116, at an academy and pass blocks of the CFE prescribed under subsection (A)(1) that are relevant to the duties of a specialty peace officer.
- B. Exceptions. The training requirement in subsection (A) is waived when an agency uses an individual during a:
1. Riot, insurrection, disaster, or other event that exhausts the peace officer resources of the agency and the individual is attending an academy; or
 2. Field training program that is a component of a basic training program at an academy, and the individual is under the direct supervision and control of a certified peace officer.
- C. Firearms training required. Unless otherwise specified in this Section, a peace officer shall complete the firearms qualification courses required in R13-4-116(E) before the peace officer carries a firearm in the course of duty.
- D. Waiver of required training.
1. An agency, on behalf of an individual, may apply to the Board for a waiver of required training if:
 - a. The individual's certified status is lapsed;
 - b. The individual has functioned in the capacity of a peace officer in another state, graduated from a Peace Officer Standards and Training Academy, and worked for at least one year as a peace officer; or
 - c. The individual graduated from a federal law enforcement academy and worked for at least one year as a law enforcement officer.
 2. The Board shall review the application and grant a waiver of required training if the Board determines that the best interests of the law enforcement profession are served, the public welfare and safety are not jeopardized, and:
 - a. The appointing agency submits to the Board written verification of the individual's previous experience and training on a form prescribed by the Board;
 - b. The individual meets the minimum qualifications listed in R13-4-105;
 - c. The individual complies with the requirements of R13-4-103(E)(1);
 - d. The appointing agency complies with the requirements of R13-4-106(C);
 - e. The individual successfully completes an examination measuring the individual's comprehension of

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the Board approved full-authority peace officer basic training course as follows:

- i. If the individual has experience as a certified peace officer in another state or for a federal law enforcement agency and submits to the Board basic training and in-service training records that the Board determines demonstrate substantial comparability to Arizona's Board approved full-authority peace officer basic training course, the individual shall pass all blocks of the CFE; and
 - ii. If the individual's certification is lapsed, the individual shall pass all blocks of the CFE; and
 - iii. The provisions in subsections (A)(1)(a), (c), and (e) through (g) apply to this subsection; and
- f. In addition to the examination required under subsection (D)(5), the individual demonstrates proficiency in the areas of physical conditioning, vehicle operations, pursuit operations, and firearms, including firearms qualifications, as required under R13-4-116(E)(1).

- E. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective July 10, 2006 (Supp. 06-1). Amended by final rulemaking at 22 A.A.R. 555, filed in the Office of the Secretary of State on February 8, 2016; effective six months after the date filed in accordance with A.R.S. § 1823 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective six months after filing with the Secretary of State as required under A.R.S. § 41-1823(A); filed October 7, 2020, effective date April 7, 2021 (Supp. 20-4). Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), effective six months after filing with the Secretary of State as required under A.R.S. § 41-1823(A); filed May 4, 2022, effective date November 4, 2022 (Supp. 22-2).

R13-4-111. Certification Retention Requirements

- A. Continuing training required.
1. A full-authority, specialty, or limited-authority peace officer shall complete eight hours of continuing training each year beginning January 1 following the date the officer is certified.
 2. Continuing training course standards for peace officers. The provider of a continuing training course for peace officers shall ensure that:
 - a. The course curriculum consists of instruction on topics related to law enforcement operations and peace officer functions and skills;
 - b. The instructor meets the requirements of R13-4-114(A)(2)(a) or (b);
 - c. An attendance verification certificate, which includes a statement that the provider believes the course meets the requirements of this Section, is given to each attendee for audit purposes;
 - d. If the training provider is an agency, an attendance roster and lesson plan or other information sufficient to determine compliance with this Section is made available upon request by the Board for Board audit;

- e. If the training provider is an outside provider that does not seek confirmation that the course meets the requirements under subsection (A)(3)(c), a copy of the lesson plan or other information sufficient to determine compliance with this Section is given to each attendee; and
 - f. If the training provider is an outside provider that seeks and receives confirmation under subsection (A)(3)(c), a copy of the Board's written confirmation is distributed to each attendee.
3. Training providers. Courses of continuing training may be conducted by the Board, an agency, or an outside provider.
- a. All Board-provided continuing training courses meet the requirements of this Section.
 - b. Agency-provided continuing training courses meet the requirements of this Section if all the requirements of subsection (A)(2) are met.
 - c. Outside-provider continuing training courses meet the requirements of this Section if all the requirements of subsection (A)(2) are met. The Board may inform an outside provider in writing whether a continuing training course meets these requirements if a course package is submitted to the Board, in a timely manner before the training is conducted, that includes:
 - i. A description of the training course that allows the Board to determine whether the course contains advanced or remedial instruction on one or more of the topic areas specified in R13-4-116(E)(1);
 - ii. The name of the individual, or if applicable, the institution or organization, providing the training with sufficient information to allow the Board to determine whether the requirements of R13-4-114(A)(2)(a) or (b) are met;
 - iii. A course schedule listing the number of instructional hours; and
 - iv. An attestation that the outside provider shall, upon request by the Board, make the lesson plan or other information sufficient to determine compliance with this Section available for Board audit, and shall ensure that the requirement of subsection (A)(2)(b) is met.
 - d. The Board's confirmation that a continuing training course conducted by an outside provider meets the requirements of this Section is not an evaluation of the content of the course. Rather, confirmation indicates only that the topic of the course is consistent with R13-4-116(E)(1). Confirmation is effective as long as the information submitted to the Board under subsection (A)(3)(c) is unchanged.
 - e. The Board shall withdraw confirmation that a continuing training course conducted by an outside provider meets the requirements of this Section if the Board receives information that the course content conflicts with the basic peace officer course content and the Board finds that the conflict creates an issue of public safety, liability, or ethics.
 - f. If an agency wishes to host an outside-provider continuing training course:
 - i. Both the agency and outside provider shall comply with the provisions of subsections (A)(3)(c)(i) through (iii);
 - ii. The agency shall provide the confirmation described under subsection (A)(3)(c);

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- iii. The outside provider shall distribute to each attendee an attendance verification certificate described under subsection (A)(2)(c) and a copy of the confirmation received under subsection (A)(3)(f)(ii); and
 - iv. Upon request, the agency shall make available to the Board the lesson plan and other information used to determine the outside-provider continuing training course met the requirements of this Section.
4. Required records. A peace officer shall provide to the appointing agency a copy of all documents provided to the peace officer under subsection (A)(2)(c), (A)(2)(e), (A)(2)(f), or (A)(3)(f)(iii). The appointing agency shall maintain the documents and make them available, upon request by the Board, for Board audit.
- B. Proficiency training required.**
1. To retain certification, a peace officer who is not in a Sergeant or higher rank within the peace officer's appointing agency shall complete eight hours of proficiency training every three years beginning January 1, following the date the peace officer is certified.
 2. Proficiency training course standards. The provider of a proficiency training course for peace officers shall ensure that:
 - a. The training requires physical demonstration of one or more performance objectives included in the 585-hour full-authority peace officer basic training course under R13-4-116 and demonstration of the use of judgment in the application of the physical act;
 - b. The curriculum consists of advanced or remedial instruction on one or more of the following topic areas:
 - i. Arrest and control tactics,
 - ii. Tactical firearms (not the annual firearms qualification required under this Section),
 - iii. Emergency vehicle operations,
 - iv. Pursuit operations,
 - v. First aid and emergency care,
 - vi. Physical conditioning, and
 - vii. High-risk stops;
 - c. The instructor meets the requirements of R13-4-114(A)(2)(c);
 - d. An attendance verification certificate, which includes a statement that the provider believes the course meets the requirements of this Section, is given to each attendee for audit purposes; and
 - e. If the training provider is an agency, an attendance roster and lesson plan or other information sufficient to determine compliance with this Section is made available upon request by the Board for Board audit.
 3. Training providers. Courses that qualify for proficiency training credit may be conducted by the Board or an agency.
 - a. All Board-provided proficiency training courses meet the requirements of this Section.
 - b. Agency-provided proficiency training courses meet the requirements of this Section if all the requirements of subsection (B)(2) are met.
 4. Required records. A peace officer shall provide to the appointing agency a copy of the document provided to the peace officer under subsection (B)(2)(d). The appointing agency shall maintain and make the document available, upon request by the Board, for Board audit.
- C. Firearms qualification required.** A peace officer authorized to carry a firearm shall qualify to continue to be authorized to carry a firearm each year beginning January 1 following certification by completing a Board-prescribed firearms qualification course, using a service handgun and service ammunition, and a Board-prescribed target identification and judgment course.
1. Firearms qualification course standards.
 - a. A firearms qualification course is a course:
 - i. Prescribed under R13-4-116(E)(1), or
 - ii. Determined by the Board to measure firearms competency at least as accurately as courses prescribed under R13-4-116(E)(1).
 - b. The provider of a firearms qualification course shall ensure that the course includes:
 - i. A timed accuracy component;
 - ii. A type and style of target that is equal to, or more difficult than, targets used in a course prescribed under R13-4-116(E)(1); and
 - iii. A success criterion that is equal to, or more difficult than, criteria used in a course prescribed under R13-4-116(E)(1).
 2. Firearms target identification and judgment course standards.
 - a. A firearms target identification and judgment course is a course:
 - i. Prescribed under R13-4-116(E)(1), or
 - ii. Determined by the Board to measure target identification and judgment competency at least as accurately as courses prescribed under R13-4-116(E)(1).
 - b. The provider of a firearms target identification and judgment course shall ensure that the course includes:
 - i. A timed accuracy component;
 - ii. A type and style of target discrimination test that is equal to, or more difficult than, those used in a course prescribed under R13-4-116(E)(1); and
 - iii. A success criterion that is equal to, or more difficult than, criteria used in a course prescribed under R13-4-116(E)(1).
 3. The provider of a firearms qualification or firearms target identification and judgment course shall ensure that the course is taught by a firearms instructor who meets the requirements of R13-4-114(A)(2)(c).
- D.** This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective July 10, 2006 (Supp. 06-1). Amended by final rulemaking at 22 A.A.R. 555, filed in the Office of the Secretary of State on February 8, 2016; effective six months after the date filed in accordance with A.R.S. § 1823 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective six months after filing with the Secretary of State as required under A.R.S. § 41-1823(A); filed October 7, 2020, effective date April 7, 2021 (Supp. 20-4).

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R13-4-112. Time Frames

- A. For the purposes of A.R.S. § 41-1073, the Board establishes the following time frames for peace officer certification:
1. Administrative completeness review time frame: 90 days.
 2. Substantive review time frame: 180 days.
 3. Overall time frame: 270 days.
- B. The administrative completeness review time frame begins on the date the Board receives the report required by R13-4-108(A)(1) from an appointing agency.
1. Within 90 days, the Board shall review the report and issue to the appointing agency a notice of administrative completeness or a notice of administrative deficiency that lists each document or item of information establishing compliance with R13-4-105 that is missing.
 2. If the Board issues a notice of administrative deficiency, the appointing agency shall make the missing documents and information available to the Board within 90 days of the date of the notice. The administrative completeness review time frame is suspended from the date of the deficiency notice until the date the missing documents and information are made available to the Board.
 3. If the appointing agency fails to make available all missing documents and information within the 90 days provided, the Board shall close the applicant's file. An applicant whose file is closed and who wants to be certified shall apply again under R13-4-103.
 4. When the file is administratively complete, the Board shall provide written notice of administrative completeness to the appointing agency.
- C. The substantive review time frame begins on the date the Board issues the notice of administrative completeness.
1. During the substantive review time frame, the Board may make one comprehensive written request for additional information.
 2. The appointing agency shall make available to the Board the additional information identified in the request for additional information within 60 days. The time frame for the Board to finish the substantive review of the application is suspended from the date of the request for additional information until the additional information is made available to the Board.
 3. If the appointing agency fails to make available the additional information requested within the 60 days provided, the Board shall close the applicant's file. An applicant whose file is closed and who wants to be certified shall apply again under R13-4-103.
 4. When the substantive review is complete, the Board shall grant or deny certification.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3).
 Adopted effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3201, effective January 11, 2003 (Supp. 02-3).
 Amended by final rulemaking at 12 A.A.R. 331, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-113. Repealed**Historical Note**

Adopted effective March 23, 1989 (Supp. 89-1).
 Amended effective August 6, 1991 (Supp. 91-3). Reference to "Council" changed to "Board" (Supp. 94-3).
 Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Section

repealed by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3).

R13-4-114. Minimum Course Requirements

- A. Instructors. An academy administrator or agency head shall ensure that only an instructor who meets the requirements of this Section facilitates a Board-prescribed course.
1. Instructor classifications.
 - a. General instructor. An individual qualified to teach topics not requiring a proficiency instructor under subsection (A)(1)(c).
 - b. Specialist instructor. An individual, other than an Arizona peace officer, qualified to teach a topic in which the instructor has special expertise but who does not qualify for general instructor status.
 - c. Proficiency instructor. An individual qualified to teach a topic area listed in R13-4-111(B)(2)(b).
 2. Instructor qualification standards.
 - a. A general instructor shall meet the following requirements:
 - i. Have two years' experience as a certified peace officer;
 - ii. Maintain instructional competency;
 - iii. Successfully complete a Board-sponsored instructor training course or an instructor training course that contains all of the performance objectives and demonstrations of the Board-sponsored instructor course.
 - b. A specialist instructor shall meet the requirements of subsections (A)(2)(b)(i) and (A)(2)(b)(ii) and either subsection (A)(2)(b)(iii) or (A)(2)(b)(iv):
 - i. Be nominated by an agency head or the administrator of an academy authorized to provide a peace officer basic training course;
 - ii. Maintain instructional competency;
 - iii. Possess a professional license or certification other than a peace officer certification that relates to the topics to be taught;
 - iv. Provide documentation to the agency head or academy administrator for forwarding to the Board that demonstrates the expertise and ability to enhance peace officer training in a special field.
 - c. A proficiency instructor shall meet the requirements of subsections (A)(2)(c)(i) and (A)(2)(c)(ii) and either subsection (A)(2)(c)(iii) or (A)(2)(c)(iv):
 - i. Meet the requirements for general instructor;
 - ii. Maintain instructional competency;
 - iii. Successfully complete a proficiency instructor course in a topic area listed in R13-4-111(B)(2)(b) that includes a competency assessment to instruct in that area within the 585-hour full-authority peace officer basic training course listed in R13-4-116(E);
 - iv. Complete a form prescribed by the Board that documents advanced training and experience in the topic area including a competency assessment to instruct in that area within the 585-hour full-authority peace officer basic training course listed in R13-4-116(E);
 - d. A proficiency instructor shall meet the requirements of subsection (A)(2)(c) separately for each topic area listed in R13-4-111(B)(2)(b) for which the proficiency instructor seeks qualification.
 3. Instructional competency. An academy administrator or an agency head shall immediately notify the Board in writing of any instructor:

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- a. Who jeopardizes the safety of students or the public,
 - b. Whose instruction violates acceptable training standards,
 - c. Who is grossly deficient in performance as an instructor, or
 - d. Who is a proficiency instructor and fails to complete satisfactorily the competency assessment to instruct in the instructor's topic area within the 585-hour full-authority peace officer basic training course.
4. If the Board determines that an instructor fails to comply with the provisions of this Section, has an instructional deficiency, or fails to maintain proficiency, any course facilitated by the instructor does not meet the requirements of this Section.
- B. Curriculum standards.** An academy administrator or agency head shall ensure that the curriculum for a Board-prescribed course meets the following standards:
1. Curriculum.
 - a. Curriculum development employs valid, job-based performance objectives and learning activities, and promotes student, officer, and public safety, as determined by a scientifically conducted validation study of the knowledge, skills, abilities, and aptitudes needed by the affected category of Arizona peace officer.
 - b. The curriculum meets or exceeds the requirements of subsection (B)(2), unless otherwise provided in this Section.
 2. Curriculum format standard. The curriculum consists of the following:
 - a. A general statement of instructional intent that summarizes the desired learning outcome, is broad in scope, and includes long-term or far-reaching learning goals;
 - b. Lesson plans containing:
 - i. Course title,
 - ii. Hours of instruction,
 - iii. Materials and aids to be used,
 - iv. Instructional strategy,
 - v. Topic areas in outline form,
 - vi. Performance objectives or learning activities,
 - vii. Success criteria, and
 - viii. Reference material;
 - c. Performance objectives consisting of at least the following components:
 - i. The student, which is an individual or group that performs a behavior as the result of instruction;
 - ii. The behavior, which is an observable demonstration by the student at the end of instruction that shows that the objective is achieved and allows evaluation of the student's capabilities to perform the behavior; and
 - iii. The conditions, which is a description of the important conditions of instruction or evaluation under which the student performs the behavior. Unless specified otherwise within the lesson plan, instruction and evaluation will be in written or oral form;
 - d. Learning activities. A student is not required to demonstrate mastery of learning activities as a condition for successfully completing the training. Learning activities are subject areas for which performance objectives are not appropriate because either:
 - i. Reliable and meaningful assessment of mastery of the material would be extremely difficult or impossible, or
 - ii. Mastery of the material is not likely to bear a direct relationship to the ability to perform entry-level peace officer job duties; and
- e. The following decimal numbering system to provide a logical means of organization:
- i. Functional area (1.0, 2.0, 3.0),
 - ii. Topic area (1.1.0, 1.2.0, 1.3.0), and
 - iii. Performance objective or learning activity (1.1.1, 1.1.2, 1.1.3).
- C.** The Board shall maintain and provide upon request a copy of curricula that meet the standards of this Section.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 12 A.A.R. 331, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective December 6, 2020 (Supp. 20-4).

R13-4-115. Repealed**Historical Note**

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Section repealed by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3).

R13-4-116. Academy Requirements

- A.** Unless otherwise provided in this Article, only the basic training provided by an academy that the Board determines meets the standards prescribed in this Section may be used to qualify for certified peace officer status.
- B.** The academy administrator shall ensure that the academy has the following:
1. A classroom with adequate heating, cooling, ventilation, lighting, and space;
 2. Chairs with tables or arms for writing;
 3. Visual aid devices for classroom presentation;
 4. Equipment in good condition for specialized instruction;
 5. A safe driving range for conducting the defensive and pursuit driving course;
 6. A firing range with adequate backstop to ensure the safety of all individuals on or near the range; and
 7. A safe location for practical exercises.
- C.** Administrative requirements. The academy administrator shall ensure that the academy:
1. Establishes and maintains written policies, procedures, and rules concerning:
 - a. Operation of the academy,
 - b. Entrance requirements,
 - c. Student and instructor conduct, and
 - d. Administering examinations;
 2. Admits only individuals who meet the requirements of R13-4-105, as attested to by the appointing agency or, in the case of an open enrollee, by the academy administrator, on form A1 or A4, as applicable, which is submitted to the Board on or before the first day of training;
 3. Administers to each student at the beginning of each academy session a written examination prescribed by the

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- Board measuring competency in reading and writing English;
4. Schedules sufficient time for the CFE to be administered as required by R13-4-110(A); and
 5. Uses only instructors who are qualified under R13-4-114(A).
- D. Academic requirements.** The academy administrator shall ensure that the academy:
1. Establishes a curriculum with performance objectives and learning activities that meet the requirements of subsection (E) and R13-4-114(B);
 2. Requires instructors to use lesson plans that cover the course content and list the performance objectives to be achieved and learning activities to be used;
 3. Administers written, oral, or practical demonstration examinations that measure the attainment of the performance objectives;
 4. Reviews examination results with each student and ensures that the student is shown any necessary corrections and signs and dates an acknowledgment that the student participated in the review;
 5. Requires a student to complete successfully oral or written examinations that cover all topics in all functional areas before graduating.
 - a. Successful completion of an examination is a score of 70 percent or greater;
 - b. For a student who scores less than 70 percent, the academy shall:
 - i. Provide remedial training, and
 - ii. Re-examine the student in the area of deficiency; and
 - c. The academy shall allow a student to retake each examination only once;
 6. Requires a student to qualify with firearms as described in R13-4-116(E);
 7. Ensures that a student meets the success criteria for police proficiency skills under subsection (E)(1);
 8. Provides remedial training for a student who misses a class before allowing the student to graduate; and
 9. Refuses to graduate a student who is absent more than 32 hours from the Board approved full-authority peace officer basic training course or 16 hours from the specialty peace officer basic training course.
- E. Basic course requirements.** The academy administrator shall ensure that the academy uses curricula that meet the requirements of R13-4-114 for the following basic courses of instruction.
1. The Board approved full-authority peace officer basic training course shall include all of the topics listed in each of the following functional areas:
 - a. Functional Area I - Introduction to Law Enforcement.
 - i. Criminal justice systems,
 - ii. History of law enforcement,
 - iii. Law enforcement services,
 - iv. Supervision and management,
 - v. Ethics and professionalism, and
 - vi. Stress management.
 - b. Functional Area II - Law and Legal Matters.
 - i. Introduction to criminal law;
 - ii. Laws of arrest;
 - iii. Search and seizure;
 - iv. Rules of evidence;
 - v. Summonses, subpoenas, and warrants;
 - vi. Civil process;
 - vii. Administration of criminal justice;
 - viii. Juvenile law and procedures;
 - ix. Courtroom demeanor;
 - x. Constitutional law;
 - xi. Substantive criminal law, A.R.S. Titles 4, 13, and 36; and
 - xii. Liability issues.
 - c. Functional Area III - Patrol Procedures.
 - i. Patrol and observation (part 1),
 - ii. Patrol and observation (part 2),
 - iii. Domestic violence,
 - iv. Behavioral health crisis response,
 - v. Crimes in progress,
 - vi. Crowd control formations and tactics,
 - vii. Bomb threats and disaster training,
 - viii. Intoxication cases,
 - ix. Communication and police information systems,
 - x. Hazardous materials,
 - xi. Bias-motivated crimes,
 - xii. Fires, and
 - xiii. Civil Disputes.
 - d. Functional Area IV - Traffic Control.
 - i. Impaired driver cases;
 - ii. Traffic citations;
 - iii. Traffic collision investigation;
 - iv. Traffic collision (practical);
 - v. Traffic direction; and
 - vi. Substantive Traffic Law, A.R.S. Title 28.
 - e. Functional Area V - Crime Scene Management.
 - i. Preliminary investigation and crime scene management,
 - ii. Crime scene investigation (practical),
 - iii. Physical evidence procedures,
 - iv. Interviewing and questioning,
 - v. Fingerprinting,
 - vi. Sex crimes investigations,
 - vii. Death investigations including sudden infant death syndrome,
 - viii. Organized crime activity,
 - ix. Investigation of specific crimes, and
 - x. Narcotics and dangerous drugs.
 - f. Functional Area VI - Community and Police Relations.
 - i. Cultural awareness,
 - ii. Victimology,
 - iii. Interpersonal communications,
 - iv. Crime prevention, and
 - v. Police and the community.
 - g. Functional Area VII - Records and Reports. Report writing.
 - h. Functional Area VIII - Police Proficiency Skills.
 - i. First aid,
 - ii. Less lethal operations (including certification),
 - iii. Firearms training (including firearms qualification),
 - iv. Physical conditioning,
 - v. High-risk stops,
 - vi. Arrest and control tactics,
 - vii. Vehicle operations, and
 - viii. Pursuit operations.
 - i. Functional Area IX - Orientation and Introduction.
 - i. Examinations and reviews,
 - ii. Counseling, and
 - iii. Non-Board specified courses.
2. The specialty peace officer basic training course shall include all of the topics necessary from the Board

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approved full-authority peace officer basic training course for the curriculum to meet the requirements of R13-4-114(B).

3. Administrative functions such as orientation, introductions, examinations and reviews, and counseling are exempt from the requirements of R13-4-114(B).
- F.** Records required. The academy administrator shall ensure that the following records are maintained and made available for inspection by the Board or staff. The academy administrator shall provide to the Board copies of records upon request.
1. A record of all students attending the academy;
 2. A manual containing the policies, procedures, and rules of the academy;
 3. A document signed by each student indicating that the student received and read a copy of the academy policies, procedures, and rules;
 4. A copy of all lesson plans used by instructors;
 5. An annually signed and dated acknowledgment that the academy administrator reviewed and approved each lesson plan used at the academy;
 6. A copy of all examinations, answer sheets or records of performance, and examination review acknowledgments;
 7. An attendance roster for all classes or other record that identifies absent students;
 8. A record of classes missed by each student and the remedial training received;
 9. A record of disciplinary actions for all students; and
 10. A file for each student containing the student's performance history.
- G.** Reports required. The academy administrator shall submit to the Board:
1. At least 10 working days before the start of each academy session, a complete schedule of classes containing the name of the instructor for each class and the training location;
 2. No more than five working days after the start of each academy session, on a form prescribed by the Board, a roster indicating whether a student is an open enrollee or appointed and if appointed, identifying the appointing agency, and the full name and Social Security number of each student;
 3. No more than five working days after dismissing a student from the academy, notification of the dismissal and the reason;
 4. No later than the tenth day of each month, a report containing:
 - a. A summary of training activities and progress of the academy class to date;
 - b. Unusual occurrences, accidents, or liability issues; and
 - c. Other problems or matters of interest noted in the course of the academy, if not included under subsection (G)(4)(b);
 5. No more than 10 working days after the end of each academy session, a complete schedule of classes containing the name of the instructor for each class and the training location;
 6. No more than 10 working days after the end of each academy session, on a form prescribed by the Board, a roster indicating whether a student is an open enrollee or appointed and if appointed, identifying the appointing agency, and the full name and Social Security number of each student successfully completing the training.
- H.** Required inspections. Before an academy provides training to individuals seeking certification for any category of peace officer, the Board staff shall conduct an onsite inspection of

the academy to determine compliance with this Section and R13-4-114. Board staff shall conduct additional inspections as often as the Board deems necessary.

1. Within 30 days after the inspection, the Board staff shall provide to the academy administrator an inspection report that lists any deficiencies identified and remedial actions the academy is required to take to comply with the standards of this Section and R13-4-114.
 2. Within 30 days after receipt of the inspection report, the academy administrator shall submit to the Board a response that indicates the progress made to complete the remedial actions necessary to correct the deficiencies described in the inspection report. The academy administrator shall submit to the Board additional responses every 30 days until all remedial action is complete.
 3. Within 30 days after receipt of notice that all remedial action is complete, Board staff shall conduct another inspection.
 4. Following each inspection, Board staff shall present an inspection report to the Board describing the academy's compliance in meeting the standards of this Section and R13-4-114.
- I.** If an academy does not conduct a peace officer basic training course for 12 consecutive months, the academy shall not provide training until Board staff conducts another inspection as required by subsection (H). Otherwise, an academy may continue to provide training unless the Board determines that the academy is not in compliance with the standards of this Section or R13-4-114.
- J.** If the Board finds that an academy fails to comply with the provisions of this Section or R13-4-114, the academy shall not provide training to individuals seeking to be certified as peace officers.
- K.** An academy administrator shall ensure that an open enrollee is admitted only after the academy administrator complies with every requirement of an agency or agency head imposed by R13-4-105, R13-4-106, R13-4-107, and R13-4-108 except for R13-4-106(C)(4).

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended effective October 20, 1995; filed with the Secretary of State April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 331, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2745, effective December 6, 2020 (Supp. 20-4). Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), effective July 3, 2022 (Supp. 22-2).

R13-4-117. Training Expense Reimbursements

- A.** Approval of training courses. The Board shall approve or deny training courses for training expense reimbursement based on compliance with this Section and R13-4-111, and availability of funds.
- B.** Application for reimbursement. Before the beginning of a training program described in R13-4-111, an agency planning to participate in the training and apply for reimbursement, shall notify the Board on prescribed forms.
- C.** Claim for reimbursement. When an individual completes a training course, the appointing agency may submit a claim for reimbursement on a form prescribed by the Board. The agency shall submit the claim within 60 days after the training is completed.

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- D.** Allowable reimbursements. The Board shall allow the following reimbursements subject to the limits on the amount of reimbursement as determined by the Board under subsection (E):
1. The state-approved rate for lodging while a peace officer attended a training course,
 2. Tuition for a training course on a pro-rata basis for the actual hours of training attended, and
 3. Other expenses incurred by a peace officer.
- E.** Limitations on reimbursements. The following limitations apply to applications for reimbursement involving training courses.
1. The Board shall not reimburse an agency if the peace officer has previously completed the same training course within three years;
 2. The Board shall not reimburse an agency for a peace officer who fails to complete a training course except upon request of the appointing agency. The agency shall present the reasons for the non-completion to the Board with the request for reimbursement; and
 3. The Board shall not reimburse an agency for the cost of insurance, medical, pension, uniform, clothing, equipment, or other benefits or expenses of a peace officer while attending a training course.
- F.** Academy reimbursement. The Board may reimburse an academy for the actual costs of materials, books, ammunition, registration fees and tuition, necessary for completion of a basic course up to the limits set by the Board. To receive reimbursement, an academy shall furnish paid receipts or invoices or other information as required by the Board to verify costs incurred. The Board shall not reimburse an academy for costs incurred for registration fees, tuition, books, materials, or ammunition for a peace officer, if the Board has made these reimbursements for the peace officer's previous attendance at an academy.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), effective July 3, 2022 (Supp. 22-2).

R13-4-118. Hearings; Rehearings

- A.** If a respondent makes a request for hearing under R13-4-109(E), the hearing shall be held in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- B.** If a respondent fails to comply with the requirements under R13-4-109(E) within 30 days of the notice of action sent under R13-4-109(E), the Board may consider the case based on the information available.
- C.** If a respondent requests a hearing, but fails to appear at the hearing, the Board or administrative law judge may vacate the hearing. If a hearing is vacated, the Board may deem the acts and violations charged in the notice of action admitted, and impose any of the sanctions provided by A.R.S. § 41-1822 (D)(1).
- D.** The Board shall render a decision in writing. The Board shall serve notice of the decision on each party as required by A.R.S. § 41-1092.04.
- E.** Except as provided in subsection (I), a party is required to file a motion for rehearing or review of a Board decision to exhaust the party's administrative remedies.
- F.** A party may file a motion for rehearing or review of a decision with the Board not later than 30 days after service of the

Board's decision, specifying the particular grounds for the motion.

- G.** The Board may grant a rehearing or review of a decision for any of the following reasons materially affecting the moving party's rights:
 1. Irregularity in the administrative proceedings, or any abuse of discretion that deprived the moving party of a fair hearing;
 2. Misconduct of the Board, the administrative law judge, or the prevailing party;
 3. Mistake 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 hearing;
 5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing; or
 6. The decision was not justified by the evidence or the decision was contrary to law.
- H.** The Board may affirm or modify the decision or grant a rehearing to any or all of the parties, on part or all of the issues, for any of the reasons in subsection (G). An order granting a rehearing shall specify the particular issues in the rehearing and the rehearing shall concern only the matters specified.
- I.** If the Board makes a specific finding that a particular decision needs to be effective immediately to preserve the public peace, health, or safety and that a review or rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, the Board shall issue the decision as a final decision without an opportunity for rehearing or review.

Historical Note

Adopted effective March 23, 1989 (Supp. 89-1). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), effective July 3, 2022 (Supp. 22-2).

ARTICLE 2. CORRECTIONAL OFFICERS**R13-4-201. Definitions**

The definitions in A.R.S. § 41-1661 apply to this Article. Additionally, unless the context otherwise requires:

"Academy" means the Correctional Officer Training Academy (COTA) of the Arizona Department of Corrections in Tucson, Arizona, or a satellite location authorized by the Director.

"Appointment" means the selection of an individual as a correctional officer.

"Applicant" means an individual who applies to be a correctional officer.

"Cadet" means an individual who is attending the academy and, upon graduation, will become a state correctional officer.

"Dangerous drug or narcotic" is defined in R13-4-101.

"Department" means the Arizona Department of Corrections.

"State correctional officer" means an individual employed by the Department in the correctional officer series.

Historical Note

Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). Reference to "Council" changed to "Board" and definitions relabeled accordingly (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final

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rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), effective July 3, 2022 (Supp. 22-2).

R13-4-202. Uniform Minimum Standards

- A.** To be admitted to the academy for training as a state correctional officer, an individual shall:
1. Be a citizen of the United States or eligible to work in the United States;
 2. Be at least 18 years of age by the date of graduation from the academy;
 3. Be a high school graduate or have successfully completed a General Education Development (G.E.D.) examination or equivalent as specified in R13-4-203(C)(3);
 4. Have a valid Arizona driver's license (Class 2 or higher) by the date of graduation from the academy;
 5. Undergo a complete background investigation that meets the standards of R13-4-203;
 6. Undergo a physical examination (within 12 months before appointment) as prescribed by the Director by a licensed physician designated by the Director;
 7. Not have been dishonorably discharged from the United States Armed Forces;
 8. Not have used a dangerous drug or narcotic, as defined at A.R.S. § 13-3401, within the past five years;
 9. Not have a pattern of abuse of prescription medication; and
 10. Not have committed a felony or a misdemeanor of a nature that the Board determines has a reasonable relationship to the functions of the position, in accordance with A.R.S. § 13-904(E).
- B.** If the Director wishes to appoint an individual whose conduct is grounds to deny certification under R13-4-109, the Director may petition the Board for a determination that the otherwise disqualifying conduct constitutes juvenile indiscretion by complying with R13-4-105(D).
- C.** Code of Ethics. To enhance the quality of performance and the conduct and the behavior of correctional officers, an individual appointed to be a correctional officer shall commit to the following Code of Ethics and shall affirm the commitment by signing the Code:

"I shall maintain high standards of honesty, integrity, and impartiality, free from any personal considerations, favoritism, or partisan demands. I shall be courteous, considerate, and prompt when dealing with the public, realizing that I serve the public. I shall maintain mutual respect and professional cooperation in my relationships with other staff members.

I shall be firm, fair, and consistent in the performance of my duties. I shall treat others with dignity, respect, and compassion, and provide humane custody and care, void of all retribution, harassment, or abuse. I shall uphold the Constitutions of the United States and the state of Arizona, and all federal and state laws. Whether on or off duty, in uniform or not, I shall conduct myself in a manner that will not bring discredit or embarrassment to my agency or the state of Arizona.

I shall report without reservation any corrupt or unethical behavior that could affect either inmates, employees, or the integrity of my agency. I shall not use my official position for personal gain. I shall maintain confidentiality of information that has been entrusted to me and designated as such.

I shall not permit myself to be placed under any kind of personal obligation that could lead any person to expect official favors. I shall not accept or solicit from anyone,

either directly or indirectly, anything of economic value such as a gift, gratuity, favor, entertainment, or loan, that is or may appear to be, designed to influence my official conduct. I will not discriminate against any inmate, employee, or any member of the public on the basis of race, gender, creed, or national origin. I will not sexually harass or condone sexual harassment of any person. I shall maintain the highest standards of personal hygiene, grooming, and neatness while on duty or otherwise representing the state of Arizona."

Historical Note

Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). Reference to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by exempt rulemaking, under Laws 2019, Chapter 93, at 25 A.A.R. 1267, with an immediate effective date of April 24, 2019 (Supp. 19-2). Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), effective July 3, 2022 (Supp. 22-2).

R13-4-203. Background Investigation

- A.** The Department shall conduct a background investigation before an applicant is admitted to the academy. The Department shall review the personal history statement submitted under subsection (B) and the results of the background investigation required in subsection (C) to determine whether the individual meets the requirements of R13-4-202 and the individual's personal history statement is accurate and truthful.
- B.** Personal history. An applicant shall complete and submit to the employing agency a personal history statement on a form prescribed by the Board. The applicant shall complete the personal history statement before the start of the background investigation and ensure that the personal history statement provides the information necessary for the Department to conduct the investigation described in subsection (C).
- C.** Investigative requirements. Before admitting an applicant to the academy, the Department shall collect, verify, and retain documents establishing that the applicant meets the standards specified in this Article. At a minimum, this documentation shall include:
1. Proof of the applicant's age and United States citizenship or eligibility to work in the United States. A copy of any of the following regarding the applicant is acceptable proof:
 - a. Birth certificate,
 - b. United States passport,
 - c. Certification of United States Naturalization,
 - d. Certificate of Nationality, or
 - e. Immigration Form I-151 or I-1551.
 2. Proof of the applicant's valid driver's license. A copy of the applicant's driver's license and written verification of the applicant's driving record from the applicable state's Department of Transportation, Motor Vehicle Division, is required proof.
 3. Proof that the applicant is a high school graduate or its equivalent. The following are acceptable proof:
 - a. A copy of a diploma from a high school recognized by the department of education of the jurisdiction in which the diploma is issued;
 - b. A copy of a certificate showing successful completion of the General Education Development (G.E.D.) test; or
 - c. In the absence of proof of high school graduation or successful completion of the G.E.D. test,

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- i. A copy of a degree or transcript from an accredited college or university showing successful completion of high school or high school equivalency;
 - ii. A United States Military Service Record DD Form 214-#4 with the Education block indicating high school completion,
 - iii. A copy of a diploma, certificate of completion, or transcripts issued by a private school in Arizona that includes the individual's name and a signed affirmation of the school administrator that the individual named received the equivalent of a high school education; or
 - iv. Other evidence of high school education equivalency submitted to the Board for consideration.
4. Record of any military discharge. A copy of the Military Service Record (DD Form 214-#4 or NGB Form 22), which documents the character of service, separation code, and reenry code, is acceptable proof.
 5. Results of a psychological fitness assessment approved by the Director and conducted by a psychologist or psychiatrist designated by the Department.
 6. Personal references: The names and addresses of at least three individuals who can provide information regarding the applicant.
 7. Previous employers or schools attended. The names and addresses of all employers of and schools attended by the applicant for the past five years.
 8. Residence history. The complete address for every location at which the applicant has lived in the last five years.
 9. Law enforcement agency records. The Department shall request and review law enforcement agency records in jurisdictions where the applicant has lived, worked, or attended school in the past five years. The Department shall document the information obtained.
 10. Criminal history query. The Department shall query the National Crime Information Center/Interstate Identification Index (NCIC/III), and the Arizona Criminal Information Center/Arizona Computerized Criminal History (ACIC/ACCH), or the equivalent for each state where the applicant has lived, worked, or attended school in the past five years and review the criminal history record for any arrest or conviction to determine compliance with R13-4-202.
 11. Fingerprint card. The Department shall obtain from an applicant and submit a fingerprint card for processing by the Arizona Department of Public Safety and the Federal Bureau of Investigation.
 - a. The Department shall process a fingerprint card for an applicant entering the academy, except as provided in subsections (C)(9)(b) and (c). The Department shall process a fingerprint card for an applicant even if the applicant has a processed applicant fingerprint card from a previous employer.
 - b. If the fingerprint card is not fully processed when the applicant is ready to enter the academy, the Department may allow the applicant to attend the academy if:
 - i. A computerized criminal history check has been made and the results are on file with the Department, and
 - ii. The applicant meets all other requirements of this Section and R13-4-202.
 - c. If the Department has not received a fully processed fingerprint card within 15 weeks of the date of

admission to the academy, the individual does not meet the requirements of this Section and may be terminated from the academy. The Department may extend the deadline for receipt of a processed fingerprint card an additional 15 weeks. An individual terminated from the academy under this subsection may be re-employed under R13-4-208 when a fully processed fingerprint card is received.

Historical Note

Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). Reference to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1044 (May 20, 2022), effective July 3, 2022 (Supp. 22-2).

R13-4-204. Records and Reports

- A. Reports. The Department shall submit to the Board a report by the Director attesting that each individual completing the academy meets the requirements of R13-4-202.
- B. Records. The Department shall make Department records available to the Board upon request of the Board or its staff. The Department shall keep the records in a central location. The Department shall maintain:
 1. A copy of reports submitted under subsection (A);
 2. All written documentation obtained or recorded under R13-4-202 and R13-4-203; and
 3. A record of all advanced training, specialized training, continuing education, and firearms qualification conducted under R13-4-206.
- C. Record retention. The Department shall maintain the records required by this Section as follows:
 1. For applicants investigated under R13-4-203 who are not appointed: two years; and
 2. For applicants who are appointed: five years from the date of termination, except records retained under subsection (B)(3), shall be retained for three years.

Historical Note

Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

R13-4-205. Basic Training Requirements

- A. Required training for state correctional officers. Before appointment as a state correctional officer, an individual shall complete a Board-approved basic correctional officer training program. This program shall meet or exceed the requirements of this Section.
- B. Curricula or training material approval time frames.
 1. For the purposes of A.R.S. § 41-1073, the Board establishes the following time frames for curricula or training material that require Board approval under this Section and R13-4-206.
 - a. Administrative completeness time frame: 60 days.
 - b. Substantive review time frame: 60 days.
 - c. Overall time frame: 120 days.
 2. The administrative completeness review time frame begins on the date the Board receives the documents required by this Section or R13-4-206.

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- a. Within 60 days, the Board shall review the documents and issue to the Department a statement of administrative completeness or a notice of administrative deficiencies that lists each item required by this Section that is missing.
 - b. If the Board issues a notice of administrative deficiency, the Department shall submit the missing documents and information within 90 days of the notice. The administrative completeness time frame is suspended from the date of the deficiency notice until the date the Board receives the missing documents and information.
 - c. If the Department fails to provide the missing documents within the 90 days provided, the Board shall deny the approval.
 - d. When the file is administratively complete, the Board shall provide written notice of administrative completeness to the Department.
3. The substantive review time frame begins on the date the Board issues the notice of administrative completeness.
 - a. During the substantive review time frame, the Board may make one comprehensive written request for additional information.
 - b. The Department shall submit to the Board the additional information identified in the request for additional information within 60 days. The time frame for the Board to finish the substantive review of the application is suspended from the date of the request for additional information until the Board receives the additional information.
 - c. The Board shall deny the approval if the additional information is not supplied within the 60 days provided.
 - d. When the substantive review is complete, the Board shall grant or deny approval.
- C. Basic course specifications.**
1. The Department shall develop the curriculum for the basic correctional officer training program.
 - a. The curriculum shall include courses in the following functional areas.
 - i. Functional Area I - Ethics and Professionalism;
 - ii. Functional Area II - Inmate Management;
 - iii. Functional Area III - Legal Issues;
 - iv. Functional Area IV - Communication Skills;
 - v. Functional Area V - Officer Safety, including firearms;
 - vi. Functional Area VI - Applied Skills;
 - vii. Functional Area VII - Security, Custody, and Control;
 - viii. Functional Area VIII - Conflict and Crisis Management; and
 - ix. Functional Area IX - Medical Emergencies, and Physical and Mental Health.
 - b. The curriculum shall also contain administrative time for orientation, counseling, testing, and remedial training.
 2. The Department shall ensure that curriculum submitted to the Board for approval contains lesson plans that include:
 - a. Course title,
 - b. Hours of instruction,
 - c. Materials and aids to be used,
 - d. Instructional strategy,
 - e. Topic areas in outline form,
 - f. Success criteria, and
 - g. The performance objectives or learning activities to be achieved.
3. After initial approval by the Board, the Director or the Director's designee shall:
 - a. Annually review each lesson plan submitted to and approved by the Board under subsection (C)(2); and
 - b. If an approved lesson plan has been changed, submit the changed lesson plan to the Board for approval; or
 - c. If an approved lesson plan has not been changed, sign and date an acknowledgment of approval for each lesson plan.
 4. The Department shall ensure that the following three components are specified for each performance objective:
 - a. The learner, which is an individual or group that performs a behavior as the result of instruction;
 - b. The behavior, which is an observable demonstration by the learner at the end of instruction that shows that the objective is achieved and allows evaluation of the learner's capabilities relative to the behavior;
 - c. The conditions, which is a description of the important conditions of instruction or evaluation under which the learner will perform the stated behavior. Unless specified otherwise, the instruction and evaluation shall be in written or oral form.
 5. The Department shall ensure that instructors of basic correctional officer training courses meet proficiency requirements developed by the Department and approved by the Board. The Department shall ensure that proficiency requirements for instructors include education, experience, or a combination of both. The Department shall affirm to the Board that each instructor has the necessary qualifications before the instructor delivers any instruction. In addition to these requirements, instructors of courses dealing with the proficiency skills of defensive tactics, physical conditioning, firearms, and medical emergencies shall complete specialized training developed by the Department and approved by the Board. Instructors shall use lesson plans described in subsection (C)(2).
- D. Academic requirements.**
1. A cadet shall be given a combination of written, oral, or practical demonstration examinations capable of measuring the cadet's attainment of the performance objectives in each approved lesson plan.
 2. Academy staff shall review examination results and academic progress with each cadet weekly. Academy staff shall ensure that each cadet is informed of correct responses.
 3. A cadet shall complete all examinations before graduating from the academy. To successfully complete a written or oral examination, a cadet shall score at least 70 percent.
 - a. If a cadet receives a score of less than 70 percent, the academy shall provide the cadet with remedial training in areas of deficiency.
 - b. The academy shall not offer a cadet more than one re-examination per lesson plan.
 4. A cadet shall qualify with firearms as specified in subsection (C). Firearms qualification shall include:
 - a. 50-shot daytime or nighttime qualification course with service handgun. The minimum passing score is 210 points out of a possible 250 points;
 - b. Seven-shot qualification course with service shotgun; and
 - c. Target identification and discrimination course.
 5. A cadet shall meet success criteria described in the Board-approved curriculum for the proficiency skills of

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- self-defense, physical conditioning, and medical emergencies, as approved under R13-4-205(C).
6. The academy shall provide a cadet who does not attend a lesson with remedial training before graduation.
 7. The academy shall not graduate a cadet who attends less than 90 percent of the total hours of basic training.
- E.** Exceptions. A cadet shall not function as a state correctional officer except:
1. As a part of an exercise within the approved basic training program, if the cadet is under the direct supervision and control of a state correctional officer; or
 2. At the discretion of the Director, for the duration of an emergency situation including, but not limited to, riots, insurrections, and natural disasters. A cadet shall not carry a firearm in the course of duty unless the cadet has successfully met the requirement of R13-4-205(D)(4).
- F.** Waiver of required training. The Board shall grant a complete or partial waiver of the required basic training, at the request of the Director, upon a finding by the Board that the best interests of the corrections profession are served and the public welfare and safety is not jeopardized by the waiver if an applicant:
1. Successfully completes a basic corrections officer training course comparable to or exceeding, in hours of instruction and subject matter, the Board-approved basic correctional officer training course and has a minimum of one year of experience as a correctional officer. The applicant shall include verification of previous experience and training with the application for waiver;
 2. Meets the minimum qualifications specified in R13-4-202; and
 3. Successfully completes a comprehensive examination measuring comprehension of the basic correctional officer training course. The comprehensive examination shall be prepared by the Department, approved by the Board, and include a written test and practical demonstrations of proficiency in firearms, physical conditioning, and defensive tactics.
- Historical Note**
Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).
- R13-4-206. Field Training and Continuing Training Including Firearms Qualification**
- A.** Field training requirement. Before graduating from the academy or within two months after graduation, a cadet or state correctional officer shall participate in and successfully complete a Board-approved field training program.
- B.** Continuing training requirement.
1. A state correctional officer shall receive eight hours of Board-approved continuing training each calendar year beginning January 1 following the date the officer received certified status.
 2. In addition to the training required under subsection (B)(1), a state correctional officer authorized to carry a firearm shall qualify each calendar year after appointment beginning January 1 following the date the officer received certified status. The firearms qualification training shall meet the standards specified under subsection (F) and shall not be used to satisfy the requirements of R13-4-206 (C).
- C.** Continuing training requirements may be fulfilled by:
1. Advanced training programs, or
 2. Specialized training programs.
- D.** Advanced training programs. The Department shall develop, design, implement, maintain, evaluate, and revise advanced training programs that include courses enhancing a correctional officer's knowledge, skills, or abilities for the job that the correctional officer performs. The courses within an advanced training program shall include advanced or remedial training in any topic listed in R13-4-205(C).
- E.** Specialized training programs. The Department shall develop, design, implement, maintain, evaluate, and revise specialized training programs that address a particular need of the Department and target a select group of officers. The courses within a specialized training program shall include topics different from those in the basic corrections training program or any advanced training programs.
- F.** Firearms qualification required. A correctional officer authorized to carry a firearm shall qualify to continue to be authorized to carry a firearm each calendar year beginning the year following the receipt of certified status by completing a Board-prescribed firearms qualification course using a service handgun, service shotgun, and service ammunition, and a Board-prescribed target identification and judgment course.
1. Firearms qualification course standards.
 - a. A firearms qualification course is:
 - i. A course prescribed under R13-4-205(C); or
 - ii. A course determined by the Board to measure firearms competency at least as accurately as the course prescribed under R13-4-205(C).
 - b. All firearms qualification courses shall include:
 - i. A timed accuracy component;
 - ii. A type and style of target that is equal to, or more difficult than, the targets used under R13-4-205(C); and
 - iii. Success criteria that are equal to, or more difficult than, the success criteria used under R13-4-205(C).
 2. Firearms target identification and judgment course standards.
 - a. A firearms target identification and judgment course is:
 - i. A course prescribed under R13-4-205(C); or
 - ii. A course determined by the Board to measure target identification and judgment competency at least as accurately as those prescribed under R13-4-205(C).
 - b. All firearms target identification and judgment courses shall include:
 - i. A timed accuracy component;
 - ii. A type and style of target discrimination that is equal to, or more difficult than, those used under R13-4-205(C); and
 - iii. Success criteria that are equal to, or more difficult than, those used under R13-4-205(C).
 3. All courses shall be presented by a firearms instructor who meets the requirements under R13-4-205(C)(5).
- Historical Note**
Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). References to "Council" changed to "Board" (Supp. 94-3). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

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R13-4-207. Repealed**Historical Note**

Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). References to "Council" changed to "Board" (Supp. 94-3). Section repealed by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3).

R13-4-208. Re-employment of State Correctional Officers

- A.** A state correctional officer who terminates employment may be re-employed by the Department within two years from the date of termination if the former state correctional officer meets the requirements of R13-4-202 and R13-4-203 at the time of re-employment.
- B.** A state correctional officer who terminates employment may be re-employed by the Department if re-employment is sought

more than two years but less than three years from the original date of termination, if the former state correctional officer meets the requirements of R13-4-202 and R13-4-203 at the time of re-employment and completes the waiver provisions of R13-4-205(F).

- C.** A former state correctional officer who seeks re-employment more than three years from the date of termination shall meet all the requirements of this Article at the time of re-employment.

Historical Note

Adopted effective December 16, 1992, filed June 16, 1992 (Supp. 82-2). Amended by final rulemaking at 8 A.A.R. 3201, effective July 11, 2002 (Supp. 02-3). Amended by final rulemaking a 22 A.A.R. 555, effective April 8, 2016 (Supp. 16-1).

As of February 17, 2022

41-1821. Arizona peace officer standards and training board; membership; appointment; term; vacancies; meetings; compensation; acceptance of grants

A. The Arizona peace officer standards and training board is established and consists of thirteen members appointed by the governor. The membership shall include:

1. Two sheriffs, one of whom is appointed from a county having a population of two hundred thousand or more persons and the remaining sheriff who is appointed from a county having a population of less than two hundred thousand persons.

2. Two chiefs of police, one of whom is appointed from a city or federally recognized Native American tribe having a population of sixty thousand or more persons and the remaining chief who is appointed from a city or federally recognized Native American tribe having a population of less than sixty thousand persons.

3. A college faculty member in public administration or a related field.

4. The attorney general.

5. The director of the department of public safety.

6. The director of the state department of corrections.

7. One member who is employed in administering county or municipal correctional facilities.

8. Two certified law enforcement officers who have knowledge of and experience in representing peace officers in disciplinary cases. One of the certified law enforcement officers must have a rank of officer and the other must have a rank of deputy. One of the appointed officers must be from a county with a population of less than five hundred thousand persons.

9. Two public members.

B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

C. The governor shall appoint a chairman from among the members at its first meeting and every year thereafter, except that an ex officio member shall not be appointed chairman. The governor shall not appoint more than one member from the same law enforcement agency. No board member who was qualified when appointed becomes disqualified unless the member ceases to hold the office that qualified the member for appointment.

D. Meetings shall be held at least quarterly or on the call of the chairman or by the written request of five members of the board or by the governor. A vacancy on the board shall occur when a member except an ex officio member is absent without the permission of the chairman from three consecutive meetings. The governor may remove a member except an ex officio member for cause.

E. The term of each regular member is three years unless a member vacates the public office that qualified the member for this appointment.

F. The board members are not eligible to receive per diem but are eligible to receive reimbursement for travel expenses pursuant to title 38, chapter 4, article 2.

G. On behalf of the board, the executive director may seek and accept contributions, grants, gifts, donations, services or other financial assistance from any individual, association, corporation or other organization having an interest in police training, and from the United States of America and any of its agencies or instrumentalities, corporate or otherwise. Only the executive director of the board may seek monies pursuant to this subsection. Such monies shall be deposited in the fund created by section 41-1825.

H. Membership on the board shall not constitute the holding of an office, and members of the board shall not be required to take and file oaths of office before serving on the board. No member of the board shall be disqualified from holding any public office or employment nor shall such member forfeit any such office or employment by reason of such member's appointment, notwithstanding the provisions of any general, special or local law, ordinance or city charter.

41-1822. Powers and duties of board; definition

A. With respect to peace officer training and certification, the board shall:

1. Establish rules for the government and conduct of the board, including meeting times and places and matters to be placed on the agenda of each meeting.

2. Make recommendations, consistent with this article, to the governor, the speaker of the house of representatives and the president of the senate on all matters relating to law enforcement and public safety.

3. Prescribe reasonable minimum qualifications for officers to be appointed to enforce the laws of this state and the political subdivisions of this state and certify officers in compliance with these qualifications. Notwithstanding any other law, the qualifications shall require United States citizenship, shall relate to physical, mental and moral fitness and shall govern the recruitment, appointment and retention of all agents, peace officers and police officers of every political subdivision of this state. The board shall constantly review the qualifications established by this section and may amend the qualifications at any time, subject to the requirements of section 41-1823.

4. Prescribe minimum courses of training and minimum standards for training facilities for law enforcement officers. Only this state and political subdivisions of this state may conduct basic peace officer training. Basic peace officer academies may admit individuals who are not peace officer cadets only if a cadet meets the minimum qualifications established by paragraph 3 of this subsection. Training shall include:

(a) Courses in responding to and reporting all criminal offenses that are motivated by race, color, religion, national origin, sexual orientation, gender or disability.

(b) Training certified by the director of the department of health services with assistance from a representative of the board on the nature of unexplained infant death and the handling of cases involving the unexplained death of an infant.

(c) Medical information on unexplained infant death for first responders, including awareness and sensitivity in dealing with families and child care providers, and the importance of forensically competent death scene investigations.

(d) Information on the protocol of investigation in cases of an unexplained infant death, including the importance of a consistent policy of thorough death scene investigation.

(e) The use of the infant death investigation checklist pursuant to section 36-3506.

(f) If an unexplained infant death occurs, the value of timely communication between the medical examiner's office, the department of health services and appropriate social service agencies that address the issue of infant death and bereavement, to achieve a better understanding of these deaths and to connect families to various community and public health support systems to enhance recovery from grief.

5. Recommend curricula for advanced courses and seminars in law enforcement and intelligence training in universities, colleges and community colleges, in conjunction with the governing body of the educational institution.

6. Make inquiries to determine whether this state or political subdivisions of this state are adhering to the standards for recruitment, appointment, retention and training established pursuant to this article. The failure of this state or any political subdivision to adhere to the standards shall be reported at the next regularly scheduled meeting of the board for action deemed appropriate by that body.

7. Employ an executive director and other staff as are necessary to fulfill the powers and duties of the board in accordance with the requirements of the law enforcement merit system council.

B. With respect to state department of corrections correctional officers, the board shall:

1. Approve a basic training curriculum of at least two hundred forty hours.

2. Establish uniform minimum standards. These standards shall include high school graduation or the equivalent and a physical examination as prescribed by the director of the state department of corrections.

3. Establish uniform standards for background investigations, including criminal histories under section 41-1750, of all applicants before enrolling in the academy. The board may adopt special procedures for extended screening and investigations in extraordinary cases to ensure suitability and adaptability to a career as a correctional officer.

4. Issue a certificate of completion to any state department of corrections correctional officer who satisfactorily complies with the minimum standards and completes the basic training program. The board may issue a certificate of completion to a state department of corrections correctional officer who has received comparable training in another state if the board determines that the training was at least equivalent to that provided by the academy and if the person complies with the minimum standards.

5. Establish continuing training requirements and approve curricula.

C. With respect to peace officer misconduct, the board may:

1. Receive complaints of peace officer misconduct from any person, request law enforcement agencies to conduct investigations and conduct independent investigations into whether an officer is in compliance with the qualifications established pursuant to subsection A, paragraph 3 of this section.

2. Receive a complaint of peace officer misconduct from the president or chief executive officer of a board recognized law enforcement association that represents the interests of certified law enforcement officers if the association believes that a law enforcement agency refused to investigate or made findings that are contradictory to prima facie evidence of a violation of the qualifications established pursuant to subsection A, paragraph 3 of this section. If the board finds that the law enforcement agency refused to investigate or made findings that contradicted prima facie evidence of a violation of the qualifications

established pursuant to subsection A, paragraph 3 of this section, the board shall conduct an independent investigation to determine whether the officer is in compliance with the qualifications established pursuant to subsection A, paragraph 3 of this section and provide a letter of the findings based on the investigation conducted by the board to the president or chief executive officer of the board recognized law enforcement association who made the complaint.

D. The board may:

1. Deny, suspend, revoke or cancel the certification of an officer who is not in compliance with the qualifications established pursuant to subsection A, paragraph 3 of this section.
2. Provide training and related services to assist state, tribal and local law enforcement agencies to better serve the public, including training for emergency alert notification systems.
3. Enter into contracts to carry out its powers and duties.

E. This section does not create a cause of action or a right to bring an action, including an action based on discrimination due to sexual orientation.

F. For the purposes of this section, "sexual orientation" means consensual homosexuality or heterosexuality.

41-1823. Adoption of minimum qualifications; certification required

A. No minimum qualifications for law enforcement officers adopted pursuant to this article shall be effective until six months after they have been filed with the secretary of state pursuant to section 41-1031.

B. Except for agency heads duly elected as required by the constitution and persons given the authority of a peace officer pursuant to section 8-205, 11-572, 12-253, 13-916 or 22-131, no person may exercise the authority or perform the duties of a peace officer unless he is certified by the board pursuant to section 41-1822, subsection A, paragraph 3.

41-1824. Training expenditures

In exercising its powers and duties, the board shall endeavor to minimize costs of administration, including utilization of training facilities already in existence and available, so that the greatest possible proportion of the funds available to it shall be expended for the purposes of providing training for local law enforcement officers.

41-1825. Peace officers' training fund

A. A special fund designated as the peace officers' training fund is established. All monies deposited in the fund are continuously appropriated to the department of public safety for the benefit of the board. The monies shall be used exclusively for the costs of training peace officers, including Indian tribe police officers who are training to be qualified pursuant to section 13-3874 and full authority peace officers who are appointed by the director of the state department of corrections and the director of the department of juvenile corrections, for grants to state agencies, counties, cities and towns of this state for peace officer training and for expenses for the operation of the board. No peace officers' training fund monies may be spent for training correctional officers of the state department of corrections.

B. All amounts to be paid or advanced from the fund shall be on warrants drawn by the department of administration on presentation of a proper claim or voucher that is approved and signed by the executive director.

C. The executive director shall lawfully disburse monies as approved by the board.

D. The board may use and the department of public safety shall provide to the board administrative support services. The board shall reimburse the department for expenses incurred for administrative support services. This subsection does not require the department to provide administrative support services that are different in kind from those that were provided on January 1, 2000. For the purposes of this subsection, "administrative support services" includes all services relating to business office, finance and procurement, information management and technology, fleet, human resources, supply, telecommunications, facilities, security and clerical and administrative assistance personnel.

41-1826. Arizona law enforcement training academy; former property; title transfer

A. Notwithstanding any law to the contrary and for the benefit of the board, the department of public safety shall transfer to the state department of corrections the title to the property that was formerly known as the Arizona law enforcement training academy and that is operated as the correctional officer training academy in Tucson.

B. If at any time after title is transferred the state department of corrections leases or sells the property, the proceeds from the lease or sale shall be deposited, pursuant to sections 35-146 and 35-147, as follows:

1. 53.66 per cent of the proceeds or 53.66 per cent of the fair market value, whichever is greater, in the peace officers' training fund established by section 41-1825.

2. 46.34 per cent of the proceeds or 46.34 per cent of the fair market value, whichever is greater, in the state general fund.

41-1827. Application for grants

Any state agency, county, city or town which desires to receive a grant pursuant to section 41-1825 shall make application to the board for such aid. The application shall contain such information as the board may request.

41-1828. Allocation of monies

A. On the recommendation of the board, the executive director shall allocate and the state treasurer shall pay from the peace officers' training fund to each county, city or town of this state that has applied and qualified for a grant pursuant to this chapter a sum that will reimburse the political subdivision in an amount not to exceed one-half of the salary paid to each peace officer while participating in training. The cost of the training and living and travel expenses up to the maximum as prescribed by title 38, chapter 4, article 2 that are incurred by state, county, city or town officers while participating in training may be paid to the appropriate state agency or political subdivision.

B. If the monies in the peace officers' training fund budgeted by the board for such salary reimbursement are insufficient to allocate such amount to each participating county, city or town, the amount that is allocated to each shall be reduced proportionately. The board may refuse to allocate monies to any state agency, county, city or town that has not, throughout the period covered by the allocation, adhered to the recruitment and training standards established by the board as applicable to personnel recruited or trained by the state agency, county, city or town during the allocation period.

41-1828.01. Required law enforcement agency reporting

A. A law enforcement agency may report to the board any peace officer misconduct in violation of the rules for retention established pursuant to section 41-1822, subsection A, paragraph 3 at any time and shall report this misconduct on the peace officer's termination, resignation or separation from the agency.

B. On request of a law enforcement agency conducting a background investigation of an applicant for the position of a peace officer, another law enforcement agency employing, previously employing or having conducted a complete or partial background investigation on the applicant shall advise the requesting agency of any known misconduct in violation of the rules for retention established pursuant to section 41-1822, subsection A, paragraph 3.

C. Civil liability may not be imposed on either a law enforcement agency or the board for providing information specified in subsections A and B of this section if there exists a good faith belief that the information is accurate.

C-5

INDUSTRIAL COMMISSION OF ARIZONA

Title 20, Chapter 5

Repeal: R20-5-201, R20-5-202, R20-5-203, R20-5-204, R20-5-205, R20-5-206, R20-5-207, R20-5-208, R20-5-209, R20-5-210, R20-5-211, R20-5-212, R20-5-213, R20-5-214, R20-5-215, R20-5-216, R20-5-217, R20-5-218, R20-5-219, R20-5-220, R20-5-221, R20-5-222, R20-5-223, R20-5-224, R20-5-701, R20-5-702, R20-5-703, R20-5-704, R20-5-705, R20-5-706, R20-5-707, R20-5-708, R20-5-709, R20-5-710, R20-5-711, R20-5-712, R20-5-713, R20-5-714, R20-5-715, R20-5-716, R20-5-717, R20-5-718, R20-5-719, R20-5-720, R20-5-721, R20-5-722, R20-5-723, R20-5-724, R20-5-725, R20-5-726, R20-5-727, R20-5-728, R20-5-729, R20-5-730, R20-5-731, R20-5-732, R20-5-733, R20-5-734, R20-5-735, R20-5-736, R20-5-737, R20-5-738, R20-5-739, R20-5-1101, R20-5-1102, R20-5-1103, R20-5-1104, R20-5-1105, R20-5-1106, R20-5-1107, R20-5-1108, R20-5-1109, R20-5-1110, R20-5-1111, R20-5-1112, R20-5-1113, R20-5-1114, R20-5-1115, R20-5-1116, R20-5-1117, R20-5-1118, R20-5-1119, R20-5-1120, R20-5-1121, R20-5-1122, R20-5-1123, R20-5-1124, R20-5-1125, R20-5-1126, R20-5-1127, R20-5-1128, R20-5-1129, R20-5-1130, R20-5-1131, R20-5-1132, R20-5-1133, R20-5-1134, R20-5-1135, R20-5-1136

New Article: Article 15

New Section: R20-5-1501, R20-5-1502, R20-5-1503, R20-5-1504, R20-5-1505, R20-5-1506, R20-5-1507, R20-5-1508, R20-5-1509, R20-5-1510, R20-5-1511, R20-5-1512, R20-5-1513, R20-5-1514, R20-5-1515, R20-5-1516, R20-5-1517, R20-5-1518, R20-5-1519, R20-5-1520, R20-5-1521, R20-5-1522, R20-5-1523, R20-5-1524, R20-5-1525, R20-5-1526, R20-5-1527, R20-5-1528, R20-5-1529, R20-5-1530, R20-5-1531, R20-5-1532, R20-5-1533, R20-5-1534, R20-5-1535, R20-5-1536, R20-5-1537, R20-5-1538, R20-5-1539, R20-5-1540, R20-5-1541



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: October 4, 2022

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

FROM: Council Staff

DATE: September 20, 2022

SUBJECT: Industrial Commission of Arizona
Title 20, Chapter 5, Articles 2, 7, 11, and 15

Repeal: R-20-5-201, R-20-5-202, R-20-5-203, R-20-5-204, R-20-5-205,
R-20-5-206, R-20-5-207, R-20-5-208, R-20-5-209, R-20-5-210,
R-20-5-211, R-20-5-212, R-20-5-213, R-20-5-214, R-20-5-215,
R-20-5-216, R-20-5-217, R-20-5-218, R-20-5-219, R-20-5-220,
R-20-5-221, R-20-5-222, R-20-5-223, R-20-5-224,

R-20-5-701, R-20-5-702, R-20-5-703, R-20-5-704, R-20-5-705,
R-20-5-706, R-20-5-707, R-20-5-708, R-20-5-709, R-20-5-710,
R-20-5-711, R-20-5-712, R-20-5-713, R-20-5-714, R-20-5-715,
R-20-5-716, R-20-5-717, R-20-5-718, R-20-5-719, R-20-5-720,
R-20-5-721, R-20-5-722, R-20-5-723, R-20-5-724, R-20-5-725,
R-20-5-726, R-20-5-727, R-20-5-728, R-20-5-729, R-20-5-730,
R-20-5-731, R-20-5-732, R-20-5-733, R-20-5-734, R-20-5-735,
R-20-5-736, R-20-5-737, R-20-5-738, R-20-5-739,

R-20-5-1101, R-20-5-1102, R-20-5-1103, R-20-5-1104,
R-20-5-1105, R-20-5-1106, R-20-5-1107, R-20-5-1108,
R-20-5-1109, R-20-5-1110, R-20-5-1111, R-20-5-1112,
R-20-5-1113, R-20-5-1114, R-20-5-1115, R-20-5-1116,
R-20-5-1117, R-20-5-1118, R-20-5-1119, R-20-5-1120,
R-20-5-1121, R-20-5-1122, R-20-5-1123, R-20-5-1124,

R-20-5-1125, R-20-5-1126, R-20-5-1127, R-20-5-1128,
R-20-5-1129, R-20-5-1130, R-20-5-1131, R-20-5-1132,
R-20-5-1133, R-20-5-1134, R-20-5-1135, R-20-5-1136

New Article: Article 15

New Section: R-20-5-1501, R-20-5-1502, R-20-5-1503, R-20-5-1504,
R-20-5-1505, R-20-5-1506, R-20-5-1507, R-20-5-1508,
R-20-5-1509, R-20-5-1510, R-20-5-1511, R-20-5-1512,
R-20-5-1513, R-20-5-1514, R-20-5-1515, R-20-5-1516,
R-20-5-1517, R-20-5-1518, R-20-5-1519, R-20-5-1520,
R-20-5-1521, R-20-5-1522, R-20-5-1523, R-20-5-1524,
R-20-5-1525, R-20-5-1526, R-20-5-1527, R-20-5-1528,
R-20-5-1529, R-20-5-1530, R-20-5-1531, R-20-5-1532,
R-20-5-1533, R-20-5-1534, R-20-5-1535, R-20-5-1536,
R-20-5-1537, R-20-5-1538, R-20-5-1539, R-20-5-1540,
R-20-5-1541

Summary:

This regular rulemaking from the Industrial Commission of Arizona (Commission) relates to rules in Title 20, Chapter 5 regarding workers' compensation self-insurance pools. Specifically, the Commission seeks to repeal Articles 2, 7, and 11 and adopt new Article 15. Article 2 contains self-insurance rules for individual self-insured employers, public agency pools, and state contractor pools. Article 7 contains self-insurance rules for similar industry employer pools. Article 11 contains self-insurance rules for individual self-insured employers. To remove overlap, inconsistency, outdated language, and unnecessary complexity, the Commission seeks to replace these provisions with new Article 15, which will apply to all self-insured employers and pools.

The Commission received initial approval from the rulemaking moratorium to initiate this rulemaking on May 25, 2022, and final approval to submit to the Council on August 11, 2022.

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 indicates that it did not review or rely on any study in conducting this rulemaking.

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

The Commission's proposed rulemaking will repeal the rules in Articles 2, 7 and 11 and will adopt new Article 15, which will apply to all self-insured employers and pools. The Commission states that the proposed rulemaking eliminates unnecessary and burdensome regulations, eliminates overlap and inconsistencies, modernizes outdated provisions, and adds needed clarity for self-insureds and prospective self-insureds.

Stakeholders include the Commission, Arizona employers and pools that meet the requirements to self-insure, under A.R.S. §§ 11-952.01, 15-382, 23-961, 23-961.01, and 41-621.01, which include safeguarding the solvency of self-insurance programs, guaranteeing that injured workers received workers' compensation benefits, and facilitation of competition, loss control, and an employer-tailored safety programs

By adopting Article 15, the Commission indicates that this rulemaking will streamline the application and approval process for stakeholders. Additionally, because Article 15 is less restrictive than Articles 2, 7, and 11, the Commission anticipates that the number of self-insureds in Arizona will increase. This provides a direct economic benefit to participating employers and their employees. The rulemaking may also indirectly benefit the consumers of self-insured businesses due to the financial savings achieved through self-insurance, as compared to securing workers' compensation through third-party insurance carriers.

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 states that its overarching objectives regarding Article 15, in no particular order with respect to priority, are to: (1) establish a uniform, streamlined procedural framework for the regulated community and the Commission's Administrative Division to authorize self-insurance for all types of self-insured entities and pools; (2) reduce the regulatory burden imposed on self-insured employers and pools to the extent possible under controlling law, and (3) further the objectives of A.R.S. §§ 11-952.01, 15-382, 23-961, 23-961.01, and 41-621.01, which include safeguarding the solvency of self-insurance programs, guaranteeing that injured workers received workers' compensation benefits, and facilitation of competition, loss control, and an employer-tailored safety programs. The Commission states they did not consider alternative methods.

6. What are the economic impacts on stakeholders?

The Commission does not anticipate an increase in costs from the new rulemaking. The Commission indicates that having the Commission calculating rates that represent actual employment and loss trends for those employers and pools that are part of the self-insurance program will result in predictable outcomes allowing the Commission to develop accurate cash flow projections which will be used to set a feasible tax rate and incentivize safety in the workforce. The Commission states that Article 15 does not place new obligations, costs, or time constraints on employers; adoption of the final rules is not expected to impose administrative or other costs required for compliance in Arizona.

As described above, the Commission indicates that this rulemaking is anticipated to lead to an increase in the number of self-insureds in Arizona by removing unnecessary and burdensome regulations and streamlining the application and approval process. Increasing the number of self-insureds would lead to financial savings for participating employers and employees, thus providing a direct economic benefit to such businesses.

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

The Commission indicated that an errant inclusion of a heading in Section 9 of the preamble has been removed, and minor typographical and grammatical errors have been corrected in the proposed rule language. Council staff does not find the changes to be a substantial change, considered as a whole, from the proposed rules.

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

The Commission indicates that it did not receive public or stakeholder 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 Commission indicates that the rules do not require issuance of a permit or license.

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 Commission indicates that no federal laws are applicable to the rules.

11. Conclusion

This regular rulemaking from the Commission seeks to repeal three separate Articles related to self-insured employers and pools and add one new Article which will apply to all

self-insured employers and pools in an effort to consolidate the rules, remove overlap, inconsistencies, outdated language, and unnecessary complexity.

The Commission is requesting an immediate effective date for this rulemaking pursuant to A.R.S. § 41-1032. Specifically, the Commission is requesting an immediate effective date under A.R.S. § 41-1032(A)(5) because it indicates the rules are less stringent than the rules that are currently in effect and the rules do not have an impact on the public health, safety, welfare or environment, and the rules do not affect the public involvement and public participation process. 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
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August 11, 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 2 (Self-Insurance Requirements for Individual Employers and Workers' Compensation Pools Organized Under A.R.S. 11-952.01(B) and 41-621.01); A.A.C. Title 20, Chapter 5, Article 7 (Self-Insurance Requirements for Workers' Compensation Pools Organized under A.R.S. 23-961.01); A.A.C. Title 20, Chapter 5, Article 11 (Self-Insurance for Individual Employers); and A.A.C. Title 20, Chapter 5, Article 15 (Workers' Compensation Self-insurance)

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.

August 8, 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 relates to the following five-year review reports: (1) Title 20, Chapter 5, Article 7, Self-Insurance Requirements for Workers' Compensation Pools Organized under A.R.S. 23-961.01, approved June 4, 2019, (2) 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, approved September 4, 2019, (3) Title 20, Chapter 5, Article 11, Self-Insurance for Individual Employers, approved May 4, 2021.

- 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)(5) because the rules are less stringent than the rules that are currently in effect and the rules do not have an impact on the public health, safety, welfare or environment, and the rules do not affect the public involvement and public participation process.

- 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.</u>	<u>Sections Affected</u>	<u>Rulemaking Action</u>
	R20-5-201	Repeal
	R20-5-202	Repeal
	R20-5-203	Repeal
	R20-5-204	Repeal
	R20-5-205	Repeal
	R20-5-206	Repeal
	R20-5-207	Repeal
	R20-5-208	Repeal
	R20-5-209	Repeal
	R20-5-210	Repeal
	R20-5-211	Repeal
	R20-5-212	Repeal
	R20-5-213	Repeal
	R20-5-214	Repeal
	R20-5-215	Repeal
	R20-5-216	Repeal
	R20-5-217	Repeal
	R20-5-218	Repeal
	R20-5-219	Repeal
	R20-5-220	Repeal
	R20-5-221	Repeal
	R20-5-222	Repeal
	R20-5-223	Repeal
	R20-5-224	Repeal
	R20-5-701	Repeal
	R20-5-702	Repeal
	R20-5-703	Repeal
	R20-5-704	Repeal
	R20-5-705	Repeal
	R20-5-706	Repeal
	R20-5-707	Repeal
	R20-5-708	Repeal
	R20-5-709	Repeal
	R20-5-710	Repeal
	R20-5-711	Repeal

R20-5-712	Repeal
R20-5-713	Repeal
R20-5-714	Repeal
R20-5-715	Repeal
R20-5-716	Repeal
R20-5-717	Repeal
R20-5-718	Repeal
R20-5-719	Repeal
R20-5-720	Repeal
R20-5-721	Repeal
R20-5-722	Repeal
R20-5-723	Repeal
R20-5-724	Repeal
R20-5-725	Repeal
R20-5-726	Repeal
R20-5-727	Repeal
R20-5-728	Repeal
R20-5-729	Repeal
R20-5-730	Repeal
R20-5-731	Repeal
R20-5-732	Repeal
R20-5-733	Repeal
R20-5-734	Repeal
R20-5-735	Repeal
R20-5-736	Repeal
R20-5-737	Repeal
R20-5-738	Repeal
R20-5-739	Repeal
R20-5-1101	Repeal
R20-5-1102	Repeal
R20-5-1103	Repeal
R20-5-1104	Repeal
R20-5-1105	Repeal
R20-5-1106	Repeal
R20-5-1107	Repeal
R20-5-1108	Repeal
R20-5-1109	Repeal
R20-5-1110	Repeal
R20-5-1111	Repeal
R20-5-1112	Repeal
R20-5-1113	Repeal
R20-5-1114	Repeal

R20-5-1115	Repeal
R20-5-1116	Repeal
R20-5-1117	Repeal
R20-5-1118	Repeal
R20-5-1119	Repeal
R20-5-1120	Repeal
R20-5-1121	Repeal
R20-5-1122	Repeal
R20-5-1123	Repeal
R20-5-1124	Repeal
R20-5-1125	Repeal
R20-5-1126	Repeal
R20-5-1127	Repeal
R20-5-1128	Repeal
R20-5-1129	Repeal
R20-5-1130	Repeal
R20-5-1131	Repeal
R20-5-1132	Repeal
R20-5-1133	Repeal
R20-5-1134	Repeal
R20-5-1135	Repeal
R20-5-1136	Repeal
ARTICLE 15	New Article
R20-5-1501	New Section
R20-5-1502	New Section
R20-5-1503	New Section
R20-5-1504	New Section
R20-5-1505	New Section
R20-5-1506	New Section
R20-5-1507	New Section
R20-5-1508	New Section
R20-5-1509	New Section
R20-5-1510	New Section
R20-5-1511	New Section
R20-5-1512	New Section
R20-5-1513	New Section
R20-5-1514	New Section
R20-5-1515	New Section
R20-5-1516	New Section
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R20-5-1519	New Section

R20-5-1520	New Section
R20-5-1521	New Section
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R20-5-1523	New Section
R20-5-1524	New Section
R20-5-1525	New Section
R20-5-1526	New Section
R20-5-1527	New Section
R20-5-1528	New Section
R20-5-1529	New Section
R20-5-1530	New Section
R20-5-1531	New Section
R20-5-1532	New Section
R20-5-1533	New Section
R20-5-1534	New Section
R20-5-1535	New Section
R20-5-1536	New Section
R20-5-1537	New Section
R20-5-1538	New Section
R20-5-1539	New Section
R20-5-1540	New Section
R20-5-1541	New Section

2. Citations to agency’s statutory rulemaking authority to include the authorizing statute and the implementing statute:

Authorizing statutes: A.R.S. §§ 23-107(A)(1); 23-921(B)

Implementing statute: A.R.S. §§ 11-952.01(B); 23-961(G); 23-961.01(B) & (F); 41-621.01(A)

Note: An initial exception from the moratorium on rulemaking, Executive Order 2022-01, was provided for this rulemaking by Brian Norman, Policy Advisor in the Office of the Arizona Governor, by e-mail dated May 25, 2022. A second exception from the moratorium on rulemaking, Executive Order 2022-01, was provided for this rulemaking by Brian Norman, Policy Advisor in the Office of the Arizona Governor, by e-mail dated August 11, 2022.

3. The effective date of this rule:

The Industrial Commission of Arizona (the “Commission”) requests an immediate effective date under A.R.S. § 41-1032(A)(5).

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):

The Commission is requesting an immediate effective date under A.R.S. § 41-1032(A)(5) because the rules are less stringent than the rules that are currently in effect and the rules do not have an impact on the public health, safety, welfare or environment, and the rules do not affect the public involvement and public participation process.

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: 28 A.A.R. 1606, July 8, 2022.

Notice of Proposed Rulemaking: 28 A.A.R. 1553, July 8, 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., Suite 303
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:

Until 1997, Arizona law mandated that employers “secure workers’ compensation to their employees” by either: (1) acquiring insurance from a carrier licensed to write workers’ compensation insurance in the state or (2) obtaining authorization from the Industrial Commission of Arizona (the “Commission”) to self-insure. See A.R.S. § 23-961(A). In 1997, the Arizona Legislature added “self-insurance pools” as a third mechanism for securing workers’ compensation. See A.R.S. §§ 23-961(A), 23-961.01. Workers’ compensation self-insurance pools are currently available to the following: (1) two or more employers who are engaged in similar industries pursuant to A.R.S. § 23-961.01(A); (2) two or more contractors or subcontractors licensed to do work for the State or any political subdivision of the State pursuant to A.R.S. § 41-621.01; (3) two or more public agencies pursuant to A.R.S. § 11-952.01; and (4) school districts pursuant to A.R.S. §§ 15-382 and 11-952.01.

Arizona’s self-insurance rules are currently contained in three separate articles of Title 20, Chapter 5 of the Arizona Administrative Code – Articles 2, 7, and 11. Article 2 contains self-insurance rules applicable to individual self-insured employers, public agency pools (under A.R.S. § 11-952.01(B)), and state contractor pools (under A.R.S. § 41-621.01). Article 7 contains the self-insurance rules applicable to similar industry employer pools organized under A.R.S. § 23-961.01(A). And Article 11 contains the self-insurance rules applicable to individual self-insured employers. Although each Article provides guidance for specific types of self-insured entities, there exists a significant amount of overlap, inconsistency, outdated language, and unnecessary complexity in the current rules, which can result in decreased participation in Arizona’s self-insurance program.

The proposed rulemaking will repeal the rules in Articles 2, 7, and 11 and adopt new Article 15, which will apply to all self-insured employers and pools. The proposed rulemaking eliminates unnecessary and burdensome regulations, eliminates overlap and inconsistencies, modernizes outdated provisions, and adds needed clarity for self-insureds and prospective self-insureds. Additionally, Article 15 offers a streamlined application and approval process that includes greater due process rights for stakeholders if the Commission were to issue an adverse determination to a self-insured or prospective self-insured.

The Commission's overarching objectives regarding Article 15, in no particular order with respect to priority, are to: (1) establish a uniform, streamlined procedural framework for the regulated community and the Commission's Administration Division to authorize self-insurance for all types of self-insured entities and pools; (2) reduce the regulatory burden imposed on self-insured employers and pools to the extent possible under controlling law; and (3) further the objectives of A.R.S. §§ 11-952.01, 15-382 23-961, 23-961.01, and 41-621.01, which include safeguarding the solvency of self-insurance programs, guaranteeing that injured workers received workers' compensation benefits, and facilitation of competition, loss control, and an employer-tailored safety programs.

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 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:

As discussed in Section 6, the proposed rulemaking eliminates unnecessary and burdensome regulations currently present in Articles 2, 7, and 11, resolves overlap and inconsistencies in the existing rules, modernizes outdated provisions, and adds needed clarity for self-insureds and prospective self-insureds. Additionally, Article 15 offers a streamlined application and approval process for all stakeholders that includes greater due process rights if the Commission were to issue an adverse determination to a self-insured or prospective self-insured. Proposed Article 15 is less restrictive than the Articles it replaces and the Commission anticipates that the rulemaking will result in an increase in the number of individual employers and pools that self-insure for workers' compensation in Arizona, providing a direct economic benefit to participating employers and their employees. To the extent applicable, the proposed rulemaking may indirectly benefit consumers of self-insured businesses, as these businesses will be able to achieve financial savings as compared to securing workers' compensation from an insurance carrier.

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

An errant inclusion of "Occupational Exposure to Respirable Crystalline Silica; Correction" was removed from Section 9 of the preamble. R20-5-1501(41) was revised from "claims liabilities and expenses" to "claims, liabilities, and expenses." R20-5-1520(G)(2) was revised from "amount security" to "amount of security." R20-5-1539(D) removed a duplicative "shall be calculated."

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

The Commission received no comments on 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 proposed amended 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:

- No federal laws are applicable to the proposed 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 rules:

- Proposed rule R20-5-1525(B)(3) incorporates by reference the February 1996 Governmental Accounting Standards Board Statement No. 30 (Risk Financing Omnibus, An Amendment of GASB Statement No. 10), available from the Governmental Accounting Standards Board. A copy of the incorporated matter is available from the Commission or may be obtained from the Governmental Accounting Standards Board at 401 Merritt 7, P.O. Box 5116, Norwalk, CT 06856-5116.

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 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

~~ARTICLE 2. SELF-INSURANCE REQUIREMENTS FOR INDIVIDUAL EMPLOYERS AND WORKERS' COMPENSATION POOLS ORGANIZED UNDER A.R.S. §§ 11-952.01(B) AND 41-621~~
REPEALED

Section

- R20-5-201. ~~Definition of Self-insurer~~ Repealed
R20-5-202. ~~Self-insurance Application; Requirements~~ Repealed
R20-5-203. ~~Self-insurance Renewal Application; Requirements~~ Repealed
R20-5-204. ~~Denial of Authorization to Self-insure~~ Repealed
R20-5-205. ~~Resolution of Authorization~~ Repealed
R20-5-206. ~~Posting of Guaranty Bond; Effective Date; Execution; Subsidiary Company Guaranty Bond; Parent Company Guaranty; Bond Amounts~~ Repealed
R20-5-207. ~~Posting of Securities in Lieu of Guaranty Bond; Registration; Deposit~~ Repealed
R20-5-208. ~~Posting Other Securities~~ Repealed
R20-5-209. ~~Authorization Limitation~~ Repealed
R20-5-210. ~~Continuation of Authorization~~ Repealed

- R20-5-211. ~~Revocation of Authorization; Notice of Insolvency; Notice of Change of Ownership~~ Repealed
- R20-5-212. ~~Notice of Revocation of Resolution of Authorization to Self-insure~~ Repealed
- R20-5-213. ~~Substitution of Bond or Securities~~ Repealed
- R20-5-214. ~~Rating Plans Available for Self-insurers~~ Repealed
- R20-5-215. ~~Fixed Premium Plan: Definition; Formula; Eligibility~~ Repealed
- R20-5-216. ~~Ex-medical Plan: Definition; Formula; Eligibility; Modification~~ Repealed
- R20-5-217. ~~Guaranteed Cost Plan: Definition; Formula; Eligibility; Cost of Calculation~~ Repealed
- R20-5-218. ~~Retrospective Rating Plan: Definition; Formula; Eligibility~~ Repealed
- R20-5-219. ~~Payment of Taxes by Self-insurers~~ Repealed
- R20-5-220. ~~Basis; Definitions~~ Repealed
- R20-5-221. ~~Book and Record Review by the Commission~~ Repealed
- R20-5-222. ~~Audits; Cost of Audit~~ Repealed
- R20-5-223. ~~Time-frames for Processing Initial and Renewal Applications for Authorization to Self-insure~~ Repealed
- R20-5-224. ~~Computation of Time~~ Repealed

~~ARTICLE 7. SELF-INSURANCE REQUIREMENTS FOR WORKERS' COMPENSATION
POOLS ORGANIZED UNDER A.R.S. § 23-961.01~~ REPEALED

Section

- R20-5-701. ~~Definitions~~ Repealed
- R20-5-702. ~~Computation of Time~~ Repealed
- R20-5-703. ~~Forms Prescribed by the Commission~~ Repealed
- R20-5-704. ~~Requirement for Commission Approval to Act as Self-insurer~~ Repealed
- R20-5-705. ~~Duration of Certificate of Authority~~ Repealed
- R20-5-706. ~~Time-frames for Processing Initial and Renewal Application for Authority to Self-insure~~ Repealed
- R20-5-707. ~~Filing Requirements for Initial Application for Self-Insurance License~~ Repealed
- R20-5-708. ~~Filing Requirements for Renewal Application for Self-Insurance License~~ Repealed
- R20-5-709. ~~Combined Net Worth~~ Repealed
- R20-5-710. ~~Similar Industry Requirement~~ Repealed
- R20-5-711. ~~Joint and Several Liability of Members~~ Repealed
- R20-5-712. ~~Fidelity Policy~~ Repealed
- R20-5-713. ~~Guaranty Bond~~ Repealed
- R20-5-714. ~~Securities Deposited with the Arizona State Treasurer~~ Repealed
- R20-5-715. ~~Aggregate and Specific Excess Insurance Policies~~ Repealed
- R20-5-716. ~~Rates and Code Classifications; Penalty Rate~~ Repealed
- R20-5-717. ~~Gross Annual Premium of Pool; Calculation and Payment of Workers' Compensation Premiums; Discounts; Refunds~~ Repealed
- R20-5-718. ~~Financial Statements~~ Repealed
- R20-5-719. ~~Board of Trustees~~ Repealed
- R20-5-720. ~~Administrator; Prohibitions; Disclosure of Interest~~ Repealed

- R20-5-721. ~~Admission of Employers into an Existing Workers' Compensation Pool~~ Repealed
- R20-5-722. ~~Termination by a Member in a Pool; Cancellation of Membership by a Pool; Final Accounting~~ Repealed
- R20-5-723. ~~Trustee Fund; Loss Fund~~ Repealed
- R20-5-724. ~~Investment Activity of a Pool~~ Repealed
- R20-5-725. ~~Service Companies; Qualifications; Contracts; Transfer of Claims~~ Repealed
- R20-5-726. ~~Processing of Workers' Compensation Claims by a Pool~~ Repealed
- R20-5-727. ~~Loss Control and Underwriting Programs~~ Repealed
- R20-5-728. ~~Insufficient Assets or Funds of a Pool; Plans of Abatement; Notice of Bankruptcy~~ Repealed
- R20-5-729. ~~Arizona Office; Recordkeeping; Records Available for Review~~ Repealed
- R20-5-730. ~~Order for Additional Financial Information; Examination of Accounts and Records by Commission~~ Repealed
- R20-5-731. ~~Assignment of Claims Under A.R.S. § 23-966; Obligation of Member to Reimburse the Commission~~ Repealed
- R20-5-732. ~~Calculation and Payment of Taxes under A.R.S. § 23-961 and A.R.S. § 23-1065~~ Repealed
- R20-5-733. ~~Review of Initial and Renewal Applications for Authority to Self-insure by the Division~~ Repealed
- R20-5-734. ~~Decision by the Commission on Initial or Renewal Applications for Authority to Self-insure~~ Repealed
- R20-5-735. ~~Right to Request a Hearing~~ Repealed
- R20-5-736. ~~Hearing Rights and Procedures~~ Repealed
- R20-5-737. ~~Decision Upon Hearing by Commission~~ Repealed
- R20-5-738. ~~Request for Review~~ Repealed
- R20-5-739. ~~Revocation of Authority to Self-insure~~ Repealed

~~ARTICLE 11. SELF-INSURANCE FOR INDIVIDUAL EMPLOYERS~~ REPEALED

Section

- R20-5-1101. ~~Definitions~~ Repealed
- R20-5-1102. ~~Computation of Time~~ Repealed
- R20-5-1103. ~~Forms~~ Repealed
- R20-5-1104. ~~Commission Approval to Act as Self-insurer~~ Repealed
- R20-5-1105. ~~Resolution of Authorization~~ Repealed
- R20-5-1106. ~~Time-frames~~ Repealed
- R20-5-1107. ~~Initial Application under A.R.S. § 23-961~~ Repealed
- R20-5-1108. ~~Self-insurance Renewal~~ Repealed
- R20-5-1109. ~~Security Deposit; Excess Insurance Policy~~ Repealed
- R20-5-1110. ~~Posting of Guaranty Bond; Bond Amount; Effective Date~~ Repealed
- R20-5-1111. ~~Posting of Other Bonds or Treasury Notes of the United States Instead of Guaranty Bond; Registration; Deposit~~ Repealed
- R20-5-1112. ~~Letter of Credit or Local Government Investment Pool Funds (LGIP)~~ Repealed
- R20-5-1113. ~~Substitution of Securities~~ Repealed

- R20-5-1114. ~~Exemption from Requirement to Post Security~~ Repealed
- R20-5-1115. ~~Rating Plans Available for a Self-insurer~~ Repealed
- R20-5-1116. ~~Fixed Premium Plan; Formula; Eligibility; Necessary Information for Plan~~ Repealed
- R20-5-1117. ~~Ex-medical Plan; Formula; Eligibility; Necessary Information for Plan~~ Repealed
- R20-5-1118. ~~Guaranteed Cost Plan; Formula; Eligibility; Necessary Information for Plan~~ Repealed
- R20-5-1119. ~~Retrospective Rating Plan; Formula; Eligibility; Necessary Information for Plan~~ Repealed
- R20-5-1120. ~~Completion of Reports in Support of Tax Rating Plan; Calculation and Payment of Taxes Owed by Self-insurer under A.R.S. §§ 23-961 and 23-1065~~ Repealed
- R20-5-1121. ~~Basis for Definitions, Classifications, Rating Procedures, and Plans~~ Repealed
- R20-5-1122. ~~Report, Book, Record, and Data Review by the Commission~~ Repealed
- R20-5-1123. ~~Audit and Cost of Audit~~ Repealed
- R20-5-1124. ~~Requirement to Provide Information to the Commission~~ Repealed
- R20-5-1125. ~~Notice to Commission of Location of Self-insurer's Claims Files~~ Repealed
- R20-5-1126. ~~Processing of Workers' Compensation Claims by a Self-insured Employer~~ Repealed
- R20-5-1127. ~~Review of Initial Application and Request for Renewal to Self-insure~~ Repealed
- R20-5-1128. ~~Decision by the Commission on Initial Application or Request for Renewal of Authorization to Self-insure~~ Repealed
- R20-5-1129. ~~Right to Request a Hearing~~ Repealed
- R20-5-1130. ~~Hearing Rights and Procedures~~ Repealed
- R20-5-1131. ~~Decision Upon Hearing by the Commission~~ Repealed
- R20-5-1132. ~~Request for Review~~ Repealed
- R20-5-1133. ~~Revocation of Authorization to Self-insure~~ Repealed
- R20-5-1134. ~~Notice of Bankruptcy, Change in Ownership Status, or Change in Business Address~~ Repealed
- R20-5-1135. ~~Plan of Action for Retaining Self-insurance Authority in the Event of Insolvency or Bankruptcy~~ Repealed
- R20-5-1136. ~~Notice of Self-insurer's Termination of Self-insurance~~ Repealed

ARTICLE 15. WORKERS' COMPENSATION SELF-INSURANCE

Section

- R20-5-1501. Definitions
- R20-5-1502. Computation of Time; Extension of Time Limits
- R20-5-1503. Forms and Reports
- R20-5-1504. Self-Insurance Criteria
- R20-5-1505. Initial Application Requirements
- R20-5-1506. Renewal Application Requirements
- R20-5-1507. New Member Application Requirements for Self-Insurance Pools
- R20-5-1508. Processing of Initial, Renewal, and New Member Applications
- R20-5-1509. Commission Review of Initial, Renewal, and New Member Applications
- R20-5-1510. Processing of Workers' Compensation Claims; Authorization to Self-Administer
- R20-5-1511. Location of Claims Files

- R20-5-1512. Reports, Books, Records, and Data Review by the Commission; Audit
- R20-5-1513. Financial Statements and Actuarial Reports
- R20-5-1514. Claim Processing and Reserving
- R20-5-1515. Notice of Adverse Condition, Bankruptcy, Change in Ownership Status, or Change in Business Address
- R20-5-1516. Revocation of Self-Insurance Authorization
- R20-5-1517. Retaining Authorization to Self-Insure Through Insolvency or Bankruptcy
- R20-5-1518. Voluntary Termination of Self-Insurance Authorization
- R20-5-1519. Withdrawal from a Self-Insurance Pool; Termination of Membership by a Self-Insurance Pool
- R20-5-1520. Security Amount and Type; Apportionment Credit; Excess Insurance Credit; Release
- R20-5-1521. Guaranty Bond; Effective Date
- R20-5-1522. Letter of Credit
- R20-5-1523. Local Government Investment Pool Funds
- R20-5-1524. Federal Money Market Fund or Treasury Note
- R20-5-1525. Waiver from Requirement to Post Security for a Public Entity or Public Entity Pool
- R20-5-1526. Excess Insurance
- R20-5-1527. Self-Insurance Pool Board; Administrator
- R20-5-1528. Self-Insurance Pool Fidelity or Crime Insurance
- R20-5-1529. Self-Insurance Pool Loss Control and Underwriting Programs
- R20-5-1530. Self-Insurance Pool Workers' Compensation Pool Operations Account; Workers' Compensation Pool Loss Account
- R20-5-1531. Gross Annual Premium of a Self-Insurance Pool; Calculation of Member Premiums; Discounts; Penalties; Refunds
- R20-5-1532. Similar Industry Pool; Joint and Several Liability of Members
- R20-5-1533. Completion of Reports in Support of Tax Rating Plans; Calculation and Payment of Self-Insurance Taxes
- R20-5-1534. Premium Rates; Deviation Rates
- R20-5-1535. Basis for Definitions, Classifications, Rating Procedures, and Plans
- R20-5-1536. Fixed Premium Plan; Eligibility; Formula; Necessary Information
- R20-5-1537. Ex-Medical Plan; Eligibility; Formula; Necessary Information
- R20-5-1538. Guaranteed Cost Plan; Eligibility; Formula; Necessary Information
- R20-5-1539. Retrospective Rating Plan; Eligibility; Formula; Necessary Information
- R20-5-1540. Hearing Procedure on Denied Initial Application, Denied Renewal Application, Denied New Member Application, Revocation of Authority, or Denied Application for Waiver of Security
- R20-5-1541. Request for Review of Decision Upon Hearing

~~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~~

~~R20-5-201. Definition of Self-insurer~~

~~“Self-insurer” or “self-insured” means an individual employer or a workers’ compensation pool as defined in A.R.S. §§ 11-952.01(B) or 41-621.01(A) that is authorized by the Commission to self-insure for workers’ compensation.~~

R20-5-202. Self-insurance Application; Requirements

- A. All applicants who initially apply for self-insurance on or after the certification of the 1993 rule amendments by the Attorney General and filing of those amendments with the Secretary of State shall:
1. Complete, date, sign, and file with the Commission an application for authority to self-insure on a form that can be obtained from the Commission and contains the following information:
 - a. Applicant identification including names, addresses, corporation, subsidiary, and partnership information;
 - b. Nature of business;
 - c. History of business in Arizona and elsewhere;
 - d. Payroll data;
 - e. Work force data;
 - f. Insurance data;
 - g. Claims history;
 - h. Method proposed to finance self-insurance liability and reserves;
 - i. Program for compliance with occupational safety and health standards, rules, and laws of this state;
 - j. Program to finance medical, surgical, and hospital benefits including information on organization responsible for processing claims;
 - k. Names and addresses of Arizona agents upon whom legal notice of proceedings before the Commission is served;
 - l. Authorization for signator;
 - m. Authorization by corporate resolution, or board of trustees resolution, if applicable; and
 - n. Statement attesting to the truthfulness of the information in the application.
 2. Maintain an office in Arizona. Payroll reports and other materials relating to the calculation of premiums shall be readily available at this office for inspection and audit by the Commission or its authorized representative.
 3. In the first year of operation, obtain a guaranty bond and specific excess insurance or excess of loss insurance in an amount as provided in R20-5-206(D)(1) to adequately protect against catastrophic losses. Starting with the second year of operation, an individual self-insurer shall choose one of the two options provided in R20-5-206(D).
The insurance shall contain:
 - a. A 60-day notice of termination; and
 - b. A provision that insolvency of the self-insurer does not relieve the excess insurer of liability assumed under the contract.
- B. An individual applicant for self-insurance that is not a member of a workers' compensation pool, in addition to complying with subsection (A) of this rule, shall:
1. Have been engaged in business in Arizona for at least five years prior to the date of application.
 2. Provide an annual payroll in this state of at least \$2,000,000 (this payroll may include the combined payrolls of all subsidiary companies carried under the self-insurance authorization; the requirements of this subsection do not apply to political subdivisions of this state) and meet either of the following thresholds:
 - a. Total reported assets of at least \$50,000,000; or
 - b. Combination of \$10,000,000 in net worth and a cash flow ratio of 25.
 3. Provide the Commission with an internally certified copy of the employer's audited or reviewed financial statements for the most current and prior two years. The Commission's review of the applicant's financial statements includes the following:
 - a. Calculation of the following ratios:
 - i. Cash Flow Ratio – Cash flow from operations divided by current liabilities which is an indication of the ability of the applicant to meet current obligations out of cash flow.
 - ii. Current Ratio – Current assets divided by current liabilities which indicate the applicant's ability to service current obligations.
 - iii. Debt Status Ratio – Net worth divided by total liabilities which indicate the proportion of funds supplied by the applicant relative to the funds supplied by creditors.
 - iv. Profitability Ratio – Profit before taxes, divided by total assets, multiplied by 100 which measures the return on assets and the efficiency of assets employed by

~~the firm.~~

~~v. Quick Ratio—Cash and equivalents, plus trade receivables, divided by current liabilities which express the degree to which the applicant's liabilities are covered by the most liquid current assets.~~

~~vi. Working Capital Ratio—Working capital divided by sales which measures the sufficiency of working capital to support sales.~~

~~b. Comparison of the applicant's ratios with the ratios of existing self-insurers in the same or a closely related industry.~~

~~e. Review of notes to the financial statement.~~

~~d. Review of management report of operation and other information published in the annual statement.~~

~~4. Provide the Commission with the names of all other jurisdictions in which it has been granted authority to self-insure and the effective dates of such authorization.~~

~~5. Provide the Commission with the names of all other jurisdictions in which its application to self-insure has been denied or its authority to self-insure has been suspended or revoked, and the dates and reasons for such denials, suspensions, or revocations.~~

~~C. In addition to the requirements of subsection (A), a workers' compensation pool applicant for self-insurance shall:~~

~~1. File with the application for self-insurance a completed indemnity agreement on a form that can be obtained from the Commission, signed by a duly authorized agent of the pool jointly and severally binding the pool and each of its members to comply with the provisions of A.R.S. Title 23, Chapter 6 and rules adopted pursuant to Chapter 6.~~

~~The indemnity agreement shall contain the following information:~~

~~a. Name of the group, with names of trustees and members;~~

~~b. Amount of the corporate surety bond;~~

~~c. Name of the service agent of the group, including a description of the agent's duties and responsibilities; and~~

~~d. Statement that the group will defend and assume liabilities in the name of and on behalf of any member of the group.~~

~~2. Provide a copy of the most recently audited financial report of the pool prepared by a certified public accountant, including a copy of the examination report prepared by the Department of Insurance and that Department's recommendations, if any.~~

~~3. Provide the names and addresses of the members of the board of trustees of the pool.~~

~~4. Provide the agreement indicating the terms and conditions of coverage within the pool including any exclusions of coverage.~~

~~5. An intergovernmental agreement filed with the Commission pursuant to A.R.S. § 11-952.01(G) (7) shall contain the provisions of A.R.S. § 11-952.01(I).~~

~~R20-5-203. Self-insurance Renewal Application; Requirements~~

~~A. All individual applicants for self-insurance renewal authority shall:~~

~~1. Complete, date, sign, and file with the Commission an Option Election form that can be obtained from the Commission when providing a bond or other security as required by R20-5-206(D) for the payment of workers' compensation liabilities. The Option Election form shall list the following:~~

~~a. Total outstanding workers' compensation accrued liabilities for all previous periods of self-insurance;~~

~~b. Amount of future reserves;~~

~~c. Amount of calculated bond based on the amount of total estimated future liability x 125%.~~

~~For those self-insurers complying with R20-5-206(D)(1), the self-insurer shall additionally provide a certificate of excess insurance:~~

~~2. Provide a continuation certificate for the guaranty bond or letter of credit signed by an authorized representative of the surety or bank. The amount of the bond, letter of credit, or securities shall equal the amount submitted on the Option Election form.~~

~~3. Submit a copy of the most recent certified annual financial statement at least 30 days prior to the anniversary date of the authorization to self-insure. A parent company that has executed a guaranty for a subsidiary shall also submit a copy of its most recent certified annual financial statement within the same time period required by this subsection.~~

~~4. Provide a Guaranty To Satisfy Compensation Claims Under Workers' Compensation Act in Arizona form as provided in R20-5-206(C) completed, signed, and dated by the parent company of a subsidiary self-insurer if the parent company of the self-insurer is different from the last filing approved by the Commission.~~

~~B. All workers' compensation pool applicants for self-insurance renewal authority shall:~~

- ~~1. Provide information to the Commission as required under subsections (A)(1), (2), and (3).~~
- ~~2. Provide an updated indemnity agreement pursuant to R20-5-202(C)(2) for changes occurring since the last filing approved by the Commission.~~

~~C. All applicants for renewal shall continue to maintain an office in Arizona as described in R20-5-202(A)(2).~~

~~D. The Commission's analysis for renewal includes the following:~~

- ~~1. A review of the items required by R20-5-202(A).~~
- ~~2. A review of the claims profile which includes a review of the preceding year's claims filed, claims denied, and denial rate. Denial rates in excess of 8% require additional analysis by the Commission's Claims Division to establish the reasons for the denials.~~
- ~~3. A review of the self-insurer's financial profile which includes a review of the financial data as described in R20-5-202(B)(3).~~

~~R20-5-204. Denial of Authorization to Self-insure~~

~~If the Commission denies an application for authorization to self-insure for failure to comply with A.R.S. § 23-961(A)(2) or for failure to comply with the requirements of R20-5-202 or R20-5-203, the Commission shall issue an Order to the applicant refusing authorization to self-insure. An appeal of such denial may be made pursuant to A.R.S. § 23-945.~~

~~R20-5-205. Resolution of Authorization~~

~~If the Commission grants authorization to self-insure, a Resolution of Authorization to Self-insure will be issued. The issuance of the Resolution shall be conditioned upon the deposit with the Commission, prior to the effective date stated in the Resolution, of the bonds or other securities specified by A.R.S. § 23-961(A)(2) and this Article.~~

~~R20-5-206. Posting of Guaranty Bond; Effective Date; Execution; Subsidiary Company Guaranty Bond; Parent Company Guaranty; Bond Amounts~~

~~A. Any guaranty bond filed with the Commission shall bear the same effective date as the effective date of the Resolution of Authorization to Self-insure and shall be for a minimum of one year, subject to annual renewal.~~

~~B. A guaranty bond shall be made by a company authorized and licensed to transact the business of fidelity and surety insurance in Arizona. The guaranty bond shall be executed by a duly authorized agent of the surety and be countersigned by a licensed resident agent. A bond form can be obtained from the Commission and contains the following information:~~

- ~~1. Applicant identification;~~
- ~~2. Amount of the bond;~~
- ~~3. Conditions of the bond obligations; and~~
- ~~4. Statement regarding responsibility for fees and costs associated with collection of the bond and responsibility for payment of any award or judgment against the surety.~~

~~C. For the Commission to issue a Resolution of Authorization to Self-insure to a subsidiary company, the parent company shall first execute a guaranty for the subsidiary on a form that can be obtained from the Commission. The parent company shall submit its most recent audited financial statement to the Commission for analysis to determine the ability of the parent company to meet its obligations under the guaranty and under A.R.S. § 23-961(A)(2). The guaranty shall state that the parent company agrees and guarantees on behalf of the subsidiary that any and all liabilities against the subsidiary, under or by virtue of the Workers' Compensation Laws of Arizona, shall be promptly and fully paid, and the subsidiary company has on deposit a guaranty bond or securities. The guaranty for a subsidiary company, and the Resolution of Authorization to Self-insure issued to such subsidiary company, shall be valid and effective only as long as the parent company has on file with the Commission a valid guaranty to satisfy compensation claims of the subsidiary. A parent company is one which owns sufficient stock in the subsidiary company to control the subsidiary and does not mean a company in which all or a majority of the stockholders are the same as in the subsidiary. The guaranty shall be accompanied by a verified certificate as to stock ownership of the subsidiary, a certified copy of the charter or articles of incorporation of the parent company and a certified copy of the resolution of the directors of the parent company authorizing a designated officer to execute the guaranty.~~

~~D. In compliance with this Article and the Workers' Compensation Laws of Arizona, an individual self-insurer that is not a member of a workers' compensation pool shall post either:~~

- ~~1. A minimum \$250,000 guaranty bond and a specific excess reinsurance policy with a self-insured retention of \$250,000 and a policy limit of liability of not less than \$10,000,000.~~
- ~~2. A guaranty bond equal to 125% of the total outstanding accrued liability as reflected in the Option Election form from the self-insurer to the Commission or a minimum guaranty bond in the amount of \$100,000, whichever is greater. The total outstanding accrued liabilities shall be determined by certification from the self-insurer for the Commission's approval.~~

~~E. In compliance with this Article and the Workers' Compensation Laws of Arizona, a workers' compensation pool shall post a guaranty bond equal to 125% of the total outstanding accrued liability as reflected in the Option Election form from the self-insured pool to the Commission or a minimum guaranty bond in the amount of \$100,000, whichever is greater. The total outstanding accrued liabilities shall be determined by certification from the self-insured pool for the Commission's approval.~~

~~R20-5-207. Posting of Securities in Lieu of Guaranty Bond; Registration; Deposit~~

~~A. In lieu of posting a guaranty bond as provided in R20-5-206, the self-insurer may deposit with the Commission for transmittal to the State Treasurer bonds of the United States:~~

~~B. Any securities deposited with the State Treasurer shall be registered to: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws. The securities shall be held by the State Treasurer, as custodian subject to the order of, and in trust for, The Industrial Commission of Arizona, with the power in the Commission to collect or order collection of the principal as it becomes due, to sell or order the sale of these securities or any part of these securities, and to apply or order the application of the proceeds to the payment of any award rendered against the self-insurer in the event of the default in the payment of its obligations. The interest coupons on such securities shall be remitted by the Commission to the self-insurer upon request as they mature:~~

~~C. The securities deposited in compliance with subsections (A) and (B) shall have a face value at maturity in the amount specified by the Commission:~~

~~R20-5-208. Posting Other Securities~~

~~If the Commission accepts securities other than those specified in R20-5-207, including letters of credit, these securities shall be registered in the same manner as provided in R20-5-207.~~

~~R20-5-209. Authorization Limitation~~

~~If the Resolution of Authorization to Self-insure is validated by a deposit of acceptable securities, or by a guaranty bond, the resolution shall remain in full force and effect for a period of one year unless revoked by the Commission:~~

~~R20-5-210. Continuation of Authorization~~

~~If timely and sufficient application for renewal is made pursuant to R20-5-203, the existing authorization to self-insure shall continue, subject to compliance with A.R.S. Title 23, Chapter 6 and this Article, until the renewal application has been finally determined by the Commission:~~

~~R20-5-211. Revocation of Authorization; Notice of Insolvency; Notice of Change of Ownership~~

~~A. The Commission may revoke a resolution of authorization to self-insure for good cause. Good cause includes:~~

- ~~1. The impairment of the solvency of the self-insurer.~~
- ~~2. The failure of the self-insurer to respond within 10 days of a demand by the Commission to substitute a satisfactory guaranty bond or securities when in the Commission's judgment the bond or securities on deposit are unsatisfactory or insufficient in amount or character.~~
- ~~3. The failure of the self-insurer to pay tax assessments levied by the Commission within 30 days of the due dates prescribed by A.R.S. §§ 23-961 and 23-1065.~~
- ~~4. The failure of the self-insurer to promptly provide the Commission within 60 days the reports required by the Commission under this Article concerning the business, operations, employees, wages, injuries, and other subjects under Commission jurisdiction.~~
- ~~5. The failure to comply with state workers' compensation laws.~~
- ~~6. The failure of the self-insurer to pay or comply with any award of the Commission within 30 days after the award becomes final.~~
- ~~7. The willful misstating of any material fact in a payroll report, injury report, or other report or statement made to the Commission.~~
- ~~8. The deliberate refusal of the self-insurer to comply with Commission rules.~~

~~9. The failure of the workers' compensation pool to notify the Commission within 30 days before termination or cancellation that a member has been terminated or cancelled.~~

~~10. The failure of the workers' compensation pool to notify the Commission within 30 days of receipt of notification that, as a result of the annual audit or examination by the Director of the Department of Insurance, it appears that the assets of the pool are insufficient to enable the pool to discharge its legal liabilities and other obligations and the resulting notification by the Director of the Department of Insurance to the administrator and board of trustees of the workers' compensation pool of the insufficiency and the Director's list of recommendations to abate the deficiency.~~

~~11. The failure of the pool to comply with the recommendation of the Director of the Department of Insurance within 60 days of the date of notice as prescribed in A.R.S. §§11-952.01(L) and 41-621.01(J).~~

~~B. The self-insurer shall notify the Commission within 24 hours of any bankruptcy filing under federal law or insolvency proceeding under any state's laws.~~

~~C. The self-insurer shall notify the Commission within 24 hours of any change in the ownership status of the employer.~~

~~R20-5-212. Notice of Revocation of Resolution of Authorization to Self-insure~~

~~The registration and deposit in the United States mail of a Notice of Revocation of the Resolution of Authorization to Self-insure, addressed to the last known address of the employer as shown by the records of the Commission, and signed by the Commission, shall be deemed to constitute actual delivery of such notice to a self-insurer.~~

~~R20-5-213. Substitution of Bond or Securities~~

~~No bond or other security deposited as a condition precedent to validating a Resolution of Authorization to Self-insure shall be returned nor shall any substitution be allowed, except upon written order of the Commission. No return of such bond or other security shall be authorized except upon proof that the employer has placed with the Commission an amount or amounts as determined by the Commission to be sufficient to provide for the present value of all death benefits, awards, and determinations previously made by the Commission or the self-insurer, with an adequate contingency amount to apply to reopened claims that have been closed and become final during the period of self-insurance.~~

~~R20-5-214. Rating Plans Available for Self-insurers~~

~~A. Any of the following rating plans are available to self-insured employers for the purpose of calculating the taxes required by A.R.S. §§ 23-961(G) and 23-1065(A):~~

- ~~1. Fixed Premium Plan~~
- ~~2. Ex-medical Plan~~
- ~~3. Guaranteed Cost Plan~~
- ~~4. Retrospective Rating Plan~~

~~B. The provisions of the rating plans apply only to operations and payroll in Arizona, and all such operations in Arizona shall be combined as a single base for the calculation of any premium modifications to all such operations.~~

~~R20-5-215. Fixed Premium Plan: Definition; Formula; Eligibility~~

~~A. A Fixed Premium Plan means a plan in which neither losses nor incurred loss reserves are used for calculation. The only discount is for premium size.~~

~~B. The formula for calculation of the fixed premium plan is as follows: Payroll x Applicable Rate Less Premium Discount.~~

~~C. Fixed Premium Plan shall be the exclusive plan available to:~~

- ~~1. Those self-insurers electing this plan.~~
- ~~2. Those self-insurers whose annual net taxable premium does not exceed \$100,000 annually.~~
- ~~3. Those self-insurers not eligible for any other plan authorized by the Commission for rating purposes.~~

~~R20-5-216. Ex-medical Plan: Definition; Formula; Eligibility; Modification~~

~~A. An Ex-Medical Plan means a plan for premium calculation which provides for rate revisions based upon the self-insurer operating a medical facility with a program for providing medical, surgical, or hospital services to all of the self-insurer's employees for their benefit and that has complied with the requirements specified in A.R.S. § 23-1070. Neither losses nor incurred loss reserves are used in such plan.~~

~~B. The formula for calculation of the Ex-Medical Plan is as follows: [(Payroll x Applicable Rate) x (1-Ex-Medical Factor)] less Premium Discount.~~

~~C. Only those self-insurers whose program for medical, surgical, or hospital services has been authorized by the Commission are eligible to utilize this plan, for premium calculation.~~

~~D. To be eligible for this plan the self-insurer's annual net taxable premium must exceed \$100,000.~~

~~R20-5-217. Guaranteed Cost Plan: Definition; Formula; Eligibility; Cost of Calculation~~

~~A. A Guaranteed Cost Plan means a plan providing for the direct relationship, on an annual basis, of the premium for tax purposes and the experience modification developed to reflect the loss payment and incurred loss experience of the self-insured employer. Loss data for three complete years must be provided to calculate the experience modification factor. This plan shall be calculated annually and the premium shall not be subject to further adjustment during the subsequent year.~~

~~B. The formula for the calculation of the Guaranteed Cost Plan is as follows: Payroll x Applicable Rate x Experience Modification Factor Less Premium Discount.~~

~~C. Only those self-insurers who satisfy all of the following requirements shall be eligible to use the Guaranteed Cost Plan:~~

~~1. The submission of data concerning paid loss determinations and incurred loss reserves for each workers' compensation claimant. The information is used to calculate an experience modification factor for the self-insurer. Three years of loss data shall be formulated to calculate the experience modification factor.~~

~~2. An annual net taxable premium exceeding \$100,000~~

~~R20-5-218. Retrospective Rating Plan: Definition; Formula; Eligibility~~

~~A. Retrospective rating plan means a plan providing for the relationship between the premium for tax purposes, the experience modification factor developed to reflect the loss payment and incurred loss experience of the self-insured employer, and the actual incurred losses for the tax year. This plan is to be calculated annually and the premiums shall not be subject to further adjustment during the tax year.~~

~~B. The formula for calculating the retrospective rating plan is as follows: [Payroll x Applicable Rate x Experience Modification Factor x Basic Premium Factor + (losses current year + adjusted losses previous year) x loss conversion factor] x Tax Multiplier = Net Taxable Premium (NTP). The NTP is subject to a maximum and minimum premium level depending on which one of the four rating option plans specified in the rating systems filed by the rating organization used by the State Compensation Fund pursuant to A.R.S. Title 20, Chapter 2, Article 4 is used.~~

~~C. Only those self-insurers who satisfy all of the following requirements shall be eligible to use the retrospective rating plan:~~

~~1. The submission of data concerning paid loss determinations and incurred loss reserved for each worker's compensation claimant. The information is used to calculate an experience modification factor for the self-insurer. Four years of loss data must be formulated. The oldest three years of data is used to calculate the rate and the most current year's data is used in the actual tax calculation.~~

~~2. An annual net taxable premium exceeding \$100,000.~~

~~R20-5-219. Payment of Taxes by Self-insurers~~

~~The tax payments described in A.R.S. §§ 23-961(G) through (J) and 23-1065(A) shall be processed in accordance with the following:~~

~~1. All self-insurers shall submit their payroll, loss, medical, and other information to the Commission by January 31 of each year.~~

~~2. All self-insurers shall pay their annual taxes on or before March 31 based on premiums calculated for the preceding calendar year. The payment for each tax shall not be less than \$250.00 per year.~~

~~3. Those self-insurers who paid \$2,000.00 or more for the administrative fund tax (A.R.S. § 23-961(G)) for the preceding calendar year shall pay a quarterly tax in the following year. One of two methods can be used to calculate the payment. The first method is a quarterly payment of 25% of the tax calculated for the previous year. The second method is based on actual payroll and premiums calculated for each quarter. Those self-insured employers who paid \$2,000.00 or more for the Special Fund tax (A.R.S. § 23-1065(A)) for the preceding calendar year must pay a quarterly tax using the same methods to calculate payment. The quarterly payments are due April 30, July 31, October 31, and January 31 for the periods ending March 31, June 30, September 30, and December 31, respectively.~~

~~4. Upon calculation of the annual taxes, it shall be determined by the Commission if the self-insured employer has overpaid or underpaid its taxes. If the total of the quarterly payments is less than the actual taxes calculated for the year, then the amount representing the difference is due on~~

or before March 31. If the total of the quarterly payments exceeds the amount of the actual taxes calculated for the year, a refund will be paid to the self-insurer.

5. If the self-insurer fails to pay the annual or quarterly taxes when due, a penalty of the greater of \$25.00 or 5% of the tax or payment due plus interest at the rate of 1% per month from the date the tax or payment was due shall be paid by the self-insurer.

R20-5-220. Basis; Definitions

For determining the premium for purposes of R20-5-214, the Commission shall utilize as the basis for classifications, rating procedures, and plans those specified in the rating systems filed by the rating organization used by the State Compensation Fund pursuant to A.R.S. Title 20, Chapter 2, Article 4.

R20-5-221. Book and Record Review by the Commission

All reports, books, and records of the self-insurer relating to classifications, payroll, incurred loss reserves, and procedures for development of statistical information for the development of rating information are subject to review by the Commission and its authorized representatives. If, in the judgment of the Commission, reports, records, and data relating to payroll or claims are not valid or credible, the Commission reserves the right to require correction of procedure and data to better determine the information needed to evaluate the rating programs.

R20-5-222. Audits; Cost of Audit

The Commission may, at any time upon three working days' notice, perform or have performed for its benefit an audit of the payroll, loss payment, and loss reserve records for incurred losses of the self-insurer for the purpose of determining the scope and adequacy of the maintained records. The entire cost of the audit will be borne by the self-insurer.

R20-5-223. Time-frames for Processing Initial and Renewal Applications for Authorization to Self-insure

A. Administrative completeness review:

1. Initial application:

a. The Administration Division shall review an initial application for authority to self-insure within 20 days of receipt of the application to determine whether the application contains the information required by A.R.S. § 23-961 and this Article.

b. The Administration Division shall inform an applicant by written notice whether the application is complete within the time frame provided in this subsection. If the application is incomplete, the Administration Division shall include in its written notice to the applicant a complete list of the missing information.

c. The Administration Division shall deem the application withdrawn if an applicant fails to file a complete application within 45 days of being notified by the Administration Division that the application is incomplete, unless the applicant obtains an extension to provide the missing information under subsection (D).

2. Renewal application:

a. The Administration Division shall review a renewal application for authority to self-insure within 20 days of receipt of the application to determine whether the application contains the information required by A.R.S. § 23-961 and this Article.

b. The Administration Division shall inform a self-insurer by written notice whether the application is complete within the time frame provided in subsection (A)(2)(a). If the application is incomplete, the Administration Division shall include in its written notice to the self-insurer a complete list of the missing information.

c. The Administration Division shall deem the application withdrawn if a self-insurer fails to file a complete application within 45 days of being notified by the Administration Division that the application is incomplete, unless the self-insurer obtains an extension to provide the missing information under subsection (D).

B. Substantive review:

1. Initial application. Within 70 days after the Administration Division determines an initial application complete, the Commission shall determine whether an initial application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall issue an order granting or denying authority to self-insure.

2. Renewal application. Within 40 days after the Administration Division determines a renewal application complete, the Commission shall determine whether a renewal application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall issue an order granting or denying authority to self-insure.

C. Overall review:

1. Initial application. The overall review period shall be 90 days, unless extended under A.R.S. § 41-1072 et seq.
2. Renewal application. The overall review period shall be 60 days, unless extended under A.R.S. § 41-1072 et seq.

D. If an applicant or self-insurer cannot timely submit to the Administration Division information to complete an initial or renewal application, the applicant or self-insurer may obtain an extension to submit the missing information by filing a written request with the Administration Division no later than 40 days after receipt of the notice from the Administration Division that the initial or renewal application is incomplete. The written request for an extension shall state the reasons the applicant or self-insurer is unable to meet the 45-day deadline. If an extension will enable the applicant or self-insurer to assemble and submit the missing information, the Administration Division shall grant an extension of not more than 30 days and provide written notice of the extension to the applicant or self-insurer.

R20-5-224. Computation of Time

A. In computing any period of time prescribed or allowed by this Article, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

B. Except as otherwise provided by law, the Commission may extend time limits prescribed by this Article for good cause.

ARTICLE 7. SELF-INSURANCE REQUIREMENTS FOR WORKERS' COMPENSATION POOLS ORGANIZED UNDER A.R.S. § 23-961.01

R20-5-701. Definitions

In addition to the definitions provided in A.R.S. § 23-901, the following definitions apply to this Article:

“Administrator” means an individual or organization chosen by a board to manage the daily operations of a pool.

“Applicant” means a worker compensation pool organized under A.R.S. § 23-961.01 that has filed an initial application for authority to self-insure.

“Board of trustees” or “board” means a body of individuals that manage all operations of a worker compensation pool.

“Cash flow ratio” means a numerical relationship that reflects an ability to meet current financial obligations out of cash flow and is calculated by dividing funds received from operations of a business by current liabilities.

“Certificate of authority” means a document issued by the Commission granting a pool authority to be self-insured for purposes of workers' compensation.

“Claim” means a worker compensation claim.

“Code classification” means a number assigned by an approved rating organization that classifies employees.

“Current ratio” means a numerical relationship that reflects an ability to pay current obligations and is calculated by dividing current assets by current liabilities.

“Debt status ratio” means a numerical relationship that reflects the proportion of funds supplied internally relative to the funds supplied by creditors and is calculated by dividing net worth by total liabilities.

“Division” means the Administration Division of the Industrial Commission of Arizona.

“Excess insurance carrier” means an insurance carrier authorized by the Arizona Department of Insurance to issue policies of excess insurance coverage and casualty insurance coverage to a self-insured.

“Experience modification rate” means a ratio comparing actual losses to expected losses based on a formula determined by an approved rating organization and which includes three years of loss information.

“Financial rating organization” means a nationally recognized organization such as Standard & Poor's or Moody's that evaluates and rates securities.

“Fiscal year” means a 12-month cycle that begins from the effective date of authority to self-insure.

“Loss fund” means an account from which money is used to pay all workers' compensation expenses including current and contingent liabilities of a worker's compensation claim of a pool.

“Member” means an employer described in A.R.S. § 23-961.01 that has joined with other employers to form a pool.

~~“Pool” means a workers’ compensation group organized under A.R.S. § 23-961.01.~~

~~“Profitability ratio” means a numerical relationship that represents the return on assets and the efficiency of assets and is calculated by dividing profit before taxes by total assets, multiplied by 100.~~

~~“Quick ratio” means a numerical relationship that represents the degree to which liabilities are covered by the most liquid current assets and is calculated by dividing cash and equivalents, plus trade receivables, by current liabilities.~~

~~“Rate” means an assignment of a code classification based on risk as established by a rating organization and approved by the Arizona Department of Insurance.~~

~~“Rating organization” means an entity that meets the requirements of A.R.S. § 20-363(F) and is approved by the Arizona Department of Insurance to establish rates, codes, and formulas used to calculate worker compensation premiums.~~

~~“Service company” means an entity or organization that is contracted by a pool to receive, process, and pay workers’ compensation claims for a pool.~~

~~“Trustee fund” means an account into which premiums, investment proceeds, and other revenues are deposited and are used to cover all administrative or operational expenses of a pool.~~

~~“Working capital ratio” means a numerical relationship that measures the sufficiency of working capital to support sales and is calculated by dividing working capital by sales.~~

R20-5-702. Computation of Time

~~A. In computing any period of time prescribed or allowed by this Article, the Commission shall not include the day of the act or event from which the period of time begins to run. The Commission shall include the last day of the period computed unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, the Commission shall exclude intermediate Saturdays, Sundays, and legal holidays in the computation of time.~~

~~B. Except as otherwise provided by law, the Commission may extend time limits prescribed by this Article for good cause.~~

R20-5-703. Forms Prescribed by the Commission

~~The following forms are available upon request from the Commission and contain requests for the information listed in each subsection:~~

~~1. Initial Application for Authority to Self-insure:~~

- ~~a. Name of the pool;~~
- ~~b. Address and telephone number of the pool’s principal office;~~
- ~~c. Effective date of formation of the pool;~~
- ~~d. Name and address of each member of the pool;~~
- ~~e. Two digit standard industrial classification code for each member of the pool;~~
- ~~f. Name and address of the industry or trade association, or professional organization to which members of the pool belong;~~
- ~~g. Effective date of formation of the industry or trade association, or professional organization to which members of the pool belong;~~
- ~~h. Type of business in which members are engaged and length of time in business for each member;~~
- ~~i. Explanation of how businesses of members are the same or similar;~~
- ~~j. Amount of workers’ compensation insurance premiums paid by each member in the preceding year;~~
- ~~k. Names and addresses of the board of trustees;~~
- ~~l. Name, address, and telephone number of the administrator appointed by the board of trustees;~~
- ~~m. Name, address, and telephone number of the service company, if applicable;~~
- ~~n. Names, titles, addresses, and telephone numbers of the persons in charge of the loss control and underwriting programs;~~
- ~~o. Premium tax plan selection;~~
- ~~p. Authorized signature and title of person signing initial application;~~
- ~~q. Statement that all information and assertions contained in the application and the documents accompanying the application are factually correct and true; and~~
- ~~r. Date of execution of the initial application.~~

~~2. Renewal Application:~~

- ~~a. Name of the pool;~~

- ~~b. Address and telephone number of the pool's principal office;~~
- ~~e. Name and address of each member of the pool and the effective date of membership;~~
- ~~d. Renewal date of the pool;~~
- ~~e. Effective date of initial authority to self-insure;~~
- ~~f. Total number of member employees covered by the pool;~~
- ~~g. Total payroll of the pool for the last fiscal year;~~
- ~~h. Name, address, and telephone number of the administrator;~~
- ~~i. Name, address, and telephone number of the service company, if applicable;~~
- ~~j. Name, address, and telephone number of the excess insurance carrier;~~
- ~~k. Name and address of the companies providing guaranty bond and fidelity policy;~~
- ~~l. Name and address of individuals serving on the board of trustees;~~
- ~~m. Names, titles, addresses, and telephone numbers of persons in charge of loss control and underwriting programs;~~
- ~~n. Authorized signature and title of person signing renewal application;~~
- ~~o. Statement that all information and assertions contained in the renewal application and the documents accompanying the renewal application are factually correct and true; and~~
- ~~p. Date of execution of the renewal application.~~

~~3. Self-Insurance Guaranty Bond Form:~~

- ~~a. Pool identification;~~
- ~~b. Names of fidelity and surety insurance companies;~~
- ~~e. Description of the bond, including the amount and conditions of the bond obligations and liability of surety;~~
- ~~d. Statement regarding the responsibility for fees and costs associated with the collection of the bond and the responsibility for payment of any award or judgment against the surety;~~
- ~~e. Authorized signatures and titles by pool, surety, and agent; and~~
- ~~f. Date of execution of the guaranty bond form.~~

~~4. Option Election Form:~~

- ~~a. Calculation and selection of type of guaranty bond and securities;~~
- ~~b. Description of incurred liability and anticipated future liability (compensation and medical) on all open cases for the preceding four years and the current year;~~
- ~~e. Authorized signature and title of person signing option election form;~~
- ~~d. Statement that all information and assertions contained in the form are factually correct and true; and~~
- ~~e. Date of execution of the option election form.~~

~~5. Self-insured Payroll Report:~~

- ~~a. Description of the cumulative payroll for all members of the pool (classification codes, methods and types of pay);~~
- ~~b. Amount paid in the preceding calendar year;~~
- ~~e. Authorized signature and title of person signing self-insured payroll report;~~
- ~~d. Statement that all information and assertions contained in the report are factually correct and true; and~~
- ~~e. Date of execution of self-insured payroll report.~~

~~6. Self-insured Medical Report:~~

- ~~a. Description of costs relating to industrial injuries;~~
- ~~b. Reinsurance premiums paid;~~
- ~~e. Total expenditures for workers' compensation and occupational disease claims;~~
- ~~d. Authorized signature and title of person signing self-insured medical report;~~
- ~~e. Statement that all information and assertions contained in the report are factually correct and true; and~~
- ~~f. Date of execution of the self-insured medical report.~~

~~7. Self-insured Injury Report:~~

- ~~a. Description of specific information for the current year and three preceding years for each injury requiring payment in excess of \$5000 which includes accumulated amount paid and reserved for each claim in excess of \$5,000;~~
- ~~b. Description of all injuries for the current year and three preceding years if individual injury required payment of less than \$5,000;~~

- ~~e. Authorized signature, title, and telephone number of person signing self-insured injury report;~~
 - ~~d. Statement that all information and assertions contained in the report are factually correct and true; and~~
 - ~~e. Date of execution of the self-insured injury report.~~
- 8. Quarterly Tax Payment Form:
 - ~~a. Name and address of the pool;~~
 - ~~b. Description and calculation of the quarterly tax and designation of the applicable quarter;~~
 - ~~e. Amount of annual tax paid in the previous calendar year; amount of the quarterly tax paid adjusted for change in the tax rate;~~
 - ~~d. Description and calculation of any penalty due;~~
 - ~~e. Authorized signature, title and telephone number of person signing the quarterly tax payment form;~~
 - ~~f. Statement that all information and assertions contained in the form are factually correct and true; and~~
 - ~~g. Date of execution of the quarterly tax payment form.~~
- 9. Application to Add a Member to Self-insured Pool:
 - ~~a. Name of the pool and name of the member to be added to the pool, including if applicable, addresses, corporation, subsidiary, partnership, and trust information;~~
 - ~~b. Nature and years in business of the member to be added;~~
 - ~~e. History of business in Arizona and elsewhere for the member to be added;~~
 - ~~d. Payroll data for each member to be added;~~
 - ~~e. Work force data for each member to be added;~~
 - ~~f. Financial data for each member to be added;~~
 - ~~g. Insurance data for each member to be added;~~
 - ~~h. Two digit standard industrial classification code for each member of the pool;~~
 - ~~i. Workers' compensation claims, loss and performance history for the member to be added;~~
 - ~~j. Authorization by board resolution approving addition of each new member;~~
 - ~~k. Authorized signature and title of person signing application;~~
 - ~~l. Statement that all information and assertions contained in the application are factually correct and true; and~~
 - ~~m. Date of execution of the application.~~
- 10. Notice Confirming Addition of Member to Pool:
 - ~~a. Name of the pool;~~
 - ~~b. Name and address of the new member;~~
 - ~~e. Effective date of membership;~~
 - ~~d. Rate and code classification to be applied to new member;~~
 - ~~e. Standard industrial classification code for new member;~~
 - ~~f. Authorized signature and title of person signing notice;~~
 - ~~g. Statement that all information and assertions contained in the notice are factually correct and true; and~~
 - ~~h. Date of execution of the notice.~~
- 11. Notice of Termination of Membership:
 - ~~a. Name and address of pool;~~
 - ~~b. Effective date of termination;~~
 - ~~e. Name and address of the member to be terminated, identified as follows:
 - ~~i. All names and addresses of every location used by the member;~~
 - ~~ii. If the member is a partnership, the names and addresses of all the partners;~~
 - ~~iii. If the member is a corporation doing business under a number of divisions, the notice shall state the names of all the divisions of the corporation; and~~
 - ~~iv. If a member changes names, both the new and former names.~~~~
 - ~~d. Authorized signature, title and telephone number of person signing notice;~~
 - ~~e. Statement that all information and assertions contained in the notice are factually correct and true; and~~
 - ~~f. Date of execution of the notice.~~

~~R20-5-704. Requirement for Commission Approval to Act as Self-insurer~~

~~A pool does not have authority to act as a self-insurer under A.R.S. §§ 23-961 and 23-961.01 unless the pool receives and maintains a certificate of authority from the Commission.~~

~~R20-5-705. Duration of Certificate of Authority~~

~~Except as provided in this subsection, a certificate of authority is valid for one fiscal year. The Commission may renew the certificate on an annual basis upon application by a pool. If a pool timely files a complete renewal application under this Article, the Commission shall consider the existing certificate of authority valid, subject to compliance with A.R.S. § 23-901 et seq. and this Article, until a new certificate of authority is issued or an order of the Commission denying a renewal application becomes final.~~

~~R20-5-706. Time-frames for Processing Initial and Renewal~~

~~Application for Authority to Self-insure~~

~~A. Administrative completeness review:~~

~~1. Initial application. The Division shall review an initial application for authority to self-insure within 20 days of receipt of the application to determine if the application contains the information required by A.R.S. § 23-961.01 and this Article. The Division shall inform an applicant by written notice whether the application is complete or is deficient within the time-frame provided in this subsection. If the application is incomplete, the Division shall include in its written notice to the applicant a complete list of the missing information. The Division shall deem the application withdrawn if an applicant fails to file a complete application within 45 days of being notified by the Division that its application is incomplete or deficient.~~

~~2. Renewal application. The Division shall review a renewal application for authority to self-insure within 20 days of receipt of the application to determine if the application contains the information required by A.R.S. § 23-961.01 and this Article. The Division shall inform a pool by written notice whether the application is complete or is deficient within the time-frame provided in this subsection. If the renewal application is incomplete, the Division shall include in its written notice to the pool a complete list of the missing information. The Division shall deem the application withdrawn if a pool fails to file a complete application within 45 days of being notified by the Division that its application is incomplete or deficient, except that failure to file the financial and actuarial reports required under R20-5-708(C) shall not cause the Division to deem the application withdrawn if a pool files the financial and actuarial reports with the Division within 120 days after the end of the pool's fiscal year.~~

~~B. Substantive review:~~

~~1. Initial application. Within 70 days after the Division deems an initial application complete, the Commission shall determine whether an initial application for authority to self-insure meets the substantive criteria of A.R.S. §23-961.01 and this Article and shall issue an order granting or denying authority to self-insure.~~

~~2. Renewal application. Within 40 days after the Division deems a renewal application complete, the Commission shall determine whether a renewal application for authority to self-insure meets the substantive criteria of A.R.S. §23-961.01 and this Article and shall issue an order granting or denying authority to self-insure.~~

~~C. Overall review:~~

~~1. Initial application. The overall review period shall be 90 days, unless extended under A.R.S. § 41-1072 et seq.~~

~~2. Renewal application. The overall review period shall be 60 days, unless extended under A.R.S. § 41-1072 et seq.~~

~~R20-5-707. Filing Requirements for Initial Application for Self-Insurance License~~

~~A. Initial application for authorization to self-insure:~~

~~1. An application for authority to self-insure shall be completed on forms approved by the Commission.~~

~~2. An application for authority to self-insure shall be filed with the Division. An application is considered filed when it is received at the office of the Division.~~

~~3. An application shall be typewritten or written in ink in legible text.~~

~~4. The administrator of a pool shall sign the application. The signature of the administrator shall be notarized.~~

~~5. The administrator shall verify, in writing, that the information contained in and submitted with the application is true and correct.~~

B. The Commission shall deem an initial application for authority to self-insure complete if an applicant provides the following information with the initial application:

1. A copy of the contract required under A.R.S. § 23-961.01 establishing the pool;
2. A copy of the articles of incorporation establishing the pool, if applicable;
3. A copy of the trust agreement establishing the pool, if applicable;
4. A copy of the by-laws governing the operations of the pool;
5. An original, signed application to join the pool from every employer receiving approval from the board to join the pool;
6. A resolution from the board approving employers for membership in the pool;
7. A certified copy of an audited financial statement or an internally reviewed and signed financial statement for each employer applying for membership in the pool for the most current and prior two years that, considered collectively, demonstrate that the combined net worth of the employers applying for membership at the time of the initial application is not less than \$1,000,000;
8. A copy of the following financial ratios for each employer applying for membership in the pool:
 - a. Cash flow ratio;
 - b. Current ratio;
 - c. Debt status ratio;
 - d. Profitability ratio;
 - e. Quick ratio; and
 - f. Working capital ratio.
9. A detailed description of the loss control program required under R20-5-727, including a description of training programs and safety requirements implemented or to be implemented;
10. A written statement from each member with an experience modification rate greater than 1.10 describing the causes of the member's experience modification rate and outlining remedial measures the member has taken and will take to lower the member's experience modification rate;
11. An original, signed fidelity policy, or a certified copy, that meets the requirements of R20-5-712, or written confirmation from an authorized insurance company that it will provide fidelity coverage to the applicant as required under R20-5-712 which coverage is effective on the date the applicant is approved by the Industrial Commission to begin self-insurance;
12. An original, signed guaranty bond, securities, or letter of credit that meets the requirements of R20-5-713 or any of the following:
 - a. Written confirmation from an authorized insurance company that it will provide a guaranty bond to the applicant as required under R20-5-713 which shall be deposited with the Industrial Commission before approval for self-insurance is effective;
 - b. Written confirmation from a financial institution that it will provide a letter of credit to the applicant as required under R20-5-713 which is effective when approval for self-insurance is effective; or
 - c. Written confirmation from a pool that it will obtain securities as required under R20-5-713 which shall be deposited with the Arizona State Treasurer before approval for self-insurance is effective.
13. A completed and signed Option Election Form and Self-Insurance Bond Form;
14. A copy of excess insurance policies issued by an authorized carrier that meet the requirements of R20-5-715 or written confirmation from an authorized insurance company that it will provide excess insurance coverage to the applicant as required under R20-5-715. The excess coverage shall be effective on the date the applicant is approved by the Industrial Commission to begin self-insurance;
15. A copy of the signed agreement or contract of hire between a board and the administrator of the pool;
16. A designation of a service company and a copy of the signed agreement between the service company and pool that meet the requirements of R20-5-725 or a written statement with supporting documentation required under R20-5-726 requesting authorization to process claims inhouse;
17. A list of all rates by code classification to be used by the pool to calculate premiums;
18. A statement showing how premiums shall be calculated for members;
19. A detailed description of the underwriting program required under R20-5-727;
20. A feasibility study by a member of the American Academy of Actuaries (MAAA) or a Fellow of the Casualty Actuarial Society (FCAS) that documents the rate structure needed to set premium levels to cover potential losses and expenses of the pool; and

21. A schedule showing net workers' compensation premiums paid, total losses incurred, and experience modification rates for the three preceding years for each employer applying for membership in the pool.

R20-5-708. Filing Requirements for Renewal Application for Self-Insurance License

A. A self-insured pool seeking renewal of an authority to self-insure for workers' compensation insurance shall file a renewal application 30 days before the existing certificate of authority expires. A pool shall maintain all bonds, policies, and contracts required under this Article while a renewal application is pending before the Commission. The Commission shall deem a renewal application withdrawn if a pool fails to maintain all bonds, policies, and contracts required under this Article.

B. A renewal application shall meet the following requirements:

1. An application for renewal of authority to self-insure shall be completed on a form approved by the Commission;
2. An application for renewal of authority to self-insure shall be filed with the Division. An application is considered filed when it is received at the office of the Division;
3. An application shall be typewritten or written in ink in legible text;
4. The administrator of a pool shall sign the application. The signature of the administrator shall be notarized; and
5. The administrator shall verify, in writing, that the information contained in and submitted with the application is true and correct.

C. A self-insured pool shall provide the following information at the time the pool files a renewal application:

1. An updated, completed and signed Option Election Form;
2. A continuation certificate for the guaranty bond or letter of credit signed by an authorized representative of the surety or bank in an amount equal to the amount set forth in the updated Option Election Form and that meets the requirements of R20-5-713;
3. A confirmation of excess insurance policies issued by an authorized carrier that meet the requirements of R20-5-715;
4. A copy of a signed service contract that meets the requirements of R20-5-725 designating an approved service company or a written statement with supporting documentation required under R20-5-726 requesting authorization to process claims in-house;
5. A continuation certificate for the fidelity policy that meets the requirements of R20-5-712;
6. A statement of any change made in the rates and code classifications utilized by the pool to calculate workers' compensation premiums;
7. A statement of any change in the calculation method of a premium for each member;
8. A statement describing the expenses paid from the trustee fund and the loss fund expressed in a dollar amount and as a percentage of the total premiums collected by the pool in the preceding fiscal year;
9. A copy of the current contract or agreement of hire between the pool and administrator; and
10. A copy of the current delegation agreement between the board of trustees and administrator, if applicable, under R20-5-719(C).

D. No later than 120 days after the end of a pool's fiscal year, the pool shall file with the Division a copy of the pool's most recent audited annual financial statements and a copy of the pool's most recent actuarial review of:

1. Losses and reserves for all known claims, and
2. Reserves for incurred but not reported claims.

E. The Commission shall deem a renewal application complete

when a pool provides the information required under subsections (C) and (D).

F. If a pool does not file a renewal application, each member of the pool shall provide the Commission proof of compliance with A.R.S. § 23-961(A) no later than 10 days after the pool's certificate of authority expires.

G. If a pool's renewal application is deemed withdrawn under this Section, each member of the pool shall provide proof of compliance with A.R.S. § 23-961(A) no later than 10 days after the date the Commission deems the application withdrawn.

R20-5-709. Combined Net Worth

A pool shall ensure that the combined net worth of its members is at least \$1 million at the time the pool files an initial application for authority to self-insure.

R20-5-710. Similar Industry Requirement

~~The Commission shall consider the following in determining whether two or more employers meet the similar industry requirement of A.R.S. § 23-961.01:~~

- ~~1. Two digit standard industrial classification code established by the 1987 Standard Industrial Classification Manual assigned to an employer applying for membership in the pool; and~~
- ~~2. Other information describing or concerning the business of an employer applying for membership in the pool. The Commission may solicit additional written or oral information from a pool or others to assist the Commission in determining whether two or more employers are engaged in a similar industry.~~

R20-5-711. Joint and Several Liability of Members

~~A. The joint and several liability provision described under A.R.S. § 23-961.01(E) shall include the following meaning:~~

- ~~1. Liability of members. Each member is liable for its own workers' compensation claims or losses incurred during the member's period of membership in the pool to the extent that the pool does not pay the claims or losses. A member's liability for its own claims or losses continues for the life of the claims and continues notwithstanding the pool's inability to process or pay the member's claims or losses. Failure of the pool to comply with the provisions of the Arizona Workers' Compensation Act relating to payment and processing of claims shall result in the assignment of the claims to the State Compensation Fund under A.R.S. § 23-966 and shall not relieve a member of liability for its own losses or claims. In the event that claims are assigned to the State Compensation Fund under A.R.S. § 23-966, the Industrial Commission shall have a right of reimbursement against the member for the amount paid by the State Compensation Fund for the member's own claims and losses, including costs, necessary expenses and reasonable attorney's fees, to the extent that such claims and losses are not covered by the pool's bonds or assets.~~
- ~~2. Liability of a pool. The pool shall pay all claims for which each member incurs liability during each member's period of membership. The pool shall defend, in the name of and on behalf of any member, any action or other proceeding which may arise or be instituted against a member as a result of injury or death covered by the Arizona Workers' Compensation Act and accompanying rules. The pool shall pay all legal costs and all expenses incurred for investigation, negotiation or defense related to such action or proceeding. The pool shall also pay all judgments or awards, and all interest due and accruing after a judgment.~~

~~B. The joint and several liability clause required under A.R.S. §23-961.01 to be included in each agreement or contract to establish a pool shall include the language in subsection (A)(1) and (2).~~

~~C. The joint and several liability clause required under A.R.S. §23-961.01(E) applies to any agreement used to form a pool on a cooperative or contract basis, through a joint formation of a nonprofit corporation, or by the execution of a trust agreement.~~

~~D. A pool shall ensure that all members read and agree, in writing, to the joint and several clause required under A.R.S. § 23-961.01 and described in subsection (A).~~

~~E. Failure to comply with the requirements of A.R.S. § 23-961.01(E) and this Section is cause for revocation of authority to self-insure.~~

R20-5-712. Fidelity Policy

~~A. A pool shall obtain and maintain during all periods of self-insurance a fidelity policy to protect the pool from unlawful actions of the following:~~

- ~~1. Individuals appointed to the pool's board of trustees (individual and collective liability);~~
- ~~2. Administrator of the pool, and~~
- ~~3. Employees of the pool.~~

~~B. The amount of the fidelity policy in subsection (A) shall be at least \$1 million. A pool may purchase a fidelity policy in excess of \$1 million if the pool determines that a policy in excess of \$1 million is necessary to protect members of the pool from damages resulting from misrepresentation or misuse of any monies or securities owned, controlled, or managed by the board, administrator, or employees of the pool.~~

~~C. The pool shall provide the Commission proof of the fidelity policy as required under R20-5-707 and R20-5-708.~~

R20-5-713. Guaranty Bond

~~A. A pool shall obtain and maintain during all periods of self-insurance a guaranty bond equal to the greater of either:~~

- ~~1. 125% of the total outstanding accrued liability as reflected in the option election form described in subsection (B); or~~

~~2. \$200,000.~~

~~B. A pool shall complete and sign an option election form when an initial or renewal application is filed to determine the amount of the bond or securities required to cover the pool's losses. A pool shall ensure that the information contained in the option election form is in agreement with the data provided in the actuarial report. A guaranty bond or continuation certificate for the guaranty bond shall be in the amount established in the option election form.~~

~~C. A guaranty bond or continuation certificate for the guaranty bond filed with the Commission shall bear the effective date of the certificate of authority under which the pool is authorized to self-insure. The guaranty bond or continuation certificate shall be valid for a period of one year, subject to annual renewal in the amount established in the Option Election Form filed with a renewal application.~~

~~D. A guaranty bond or continuation certificate for the guaranty bond shall be issued by an insurance carrier authorized by the Arizona Department of Insurance to transact fidelity and surety insurance in Arizona. The guaranty bond and continuation certificate shall be executed by an authorized agent of a surety, as evidenced by a certified power of attorney, and countersigned by a licensed resident agent.~~

~~E. Instead of posting a guaranty bond, a pool may either deposit with the Commission for transmittal to the Arizona State Treasurer, bonds of the United States or other securities. The amount of the bond or securities shall bear a face value equal to the requirements of subsections (A) and (B).~~

~~F. Instead of posting a guaranty bond, a pool may obtain a letter of credit. The amount of the letter of credit shall be equal to the requirements of subsections (A) and (B).~~

~~G. The Commission shall not accept certificates of deposit instead of a guaranty bond, securities, or letter of credit.~~

~~R20-5-714. Securities Deposited with the Arizona State Treasurer~~

~~A. Any securities deposited with Arizona State Treasurer under R20-5-713(E) shall be registered as follows: "The Industrial Commission of Arizona, in trust for the fulfillment by (name of pool), of (name of pool's) obligations under the Arizona Workers' Compensation Act."~~

~~B. The securities shall be held by the State Treasurer, as custodian, subject to the order of and in trust for, the Industrial Commission of Arizona~~

~~C. The Commission shall have the following powers with regard to securities held by the State Treasurer:~~

- ~~1. To collect or order the collection of the securities as they become due;~~
- ~~2. To sell or order the sale of the securities, or any part of the securities; and~~
- ~~3. To apply or order the application of the proceeds of the sale of securities, to the payment of any award rendered against the pool in the event of a default in the payment of a pool's obligations under the Arizona Workers' Compensation Act.~~

~~D. The Commission shall remit, upon request from a pool that has deposited securities for transmittal to the State Treasurer, interest coupons on securities as they mature.~~

~~R20-5-715. Aggregate and Specific Excess Insurance Policies~~

~~A. A pool shall maintain aggregate and specific excess insurance policies during all periods of self-insurance.~~

~~B. The Commission shall not consider policies of aggregate and specific excess insurance when determining a pool's ability to fulfill its financial obligations under the Arizona Workers' Compensation Act, unless the policies are issued by a casualty insurance company authorized by the Arizona Department of Insurance to transact business in Arizona.~~

~~C. A pool or insurance company seeking to cancel or refuse renewal of aggregate and specific excess insurance policies shall provide 90 days written notice of the proposed cancellation or non-renewal to the other party to the policies and to the Commission. The written notice shall be by registered or certified mail. Failure to provide notice as required by this Section precludes cancellation or non-renewal of the policies.~~

~~D. Policy and Retention Amounts:~~

~~1. Policy and retention amounts for specific and aggregate excess insurance for a pool shall be as follows:~~

- ~~a. Retention for specific excess insurance shall not be less than \$100,000 nor exceed \$1,250,000 without advance written approval by the Commission. Specific excess insurance shall be provided to the statutory limit; and~~
- ~~b. Maximum retention of aggregate excess insurance shall not exceed 150% of collected premiums. Total aggregate insurance coverage shall not be less than \$1,000,000.~~

~~2. Aggregate and specific excess insurance policies shall state that payments of workers' compensation benefits on a claim made by a member employer, pool, or surety under a bond or~~

through the use of other approved securities shall be applied toward reaching the retention level in the policy.

R20-5-716. Rates and Code Classifications; Penalty Rate

A. A pool shall only use rates and code classifications obtained from a rating organization licensed by the Arizona Department of Insurance.

B. A pool may apply a penalty rate in excess of an annual premium to any member with an unfavorable loss experience, provided the pool provides written notice to the member 30 days before the effective date of the change in rate.

R20-5-717. Gross Annual Premium of Pool; Calculation and Payment of Workers' Compensation Premiums; Discounts; Refunds

A. The gross annual workers' compensation premium for a pool shall be sufficient to fund the administrative expenses and total incurred losses of the pool.

B. A pool shall calculate a member's workers' compensation premium and experience modification rate using formulas described in a rating plan that meets the following:

1. The rating plan is filed by an Arizona licensed rating organization, and
2. The rating plan has not been disapproved by the Arizona Department of Insurance.

C. Each member shall pay to a pool the premium due in equal monthly or quarterly payments for the premium year, except that upon admission into a pool, a new member shall pay no later than five days after the effective date of membership not less than 25% of the annual premium calculated for the new member. The remaining premium due after a new member has advanced 25% of the annual premium shall be paid in equal monthly or quarterly payments for the premium year. A pool shall permit a member to pay a premium in advance of the monthly or quarterly schedule.

D. Deviations from rates:

1. A pool shall not deviate from established workers' compensation rates unless the pool complies with the following:

- a. The deviation is based upon the expense and loss experience of the pool;
- b. The deviation is supported and justified by an actuary's feasibility study, and
- c. The pool provides the information required under this subsection to the Division and receives approval from the Division.

2. The Division shall approve the deviation if the deviation is based upon the expense and loss experience of a pool and is justified in an actuary's feasibility study.

E. Refunds. A pool may declare a refund of surplus money, including excess investment income, to its members under the following conditions:

1. Surplus money exists, including excess investment money, for a fiscal year in excess of the amount necessary to meet all financial obligations for the fiscal year, including financial obligations arising from incurred but not reported claims;
2. Total assets of a pool are greater than total liabilities for each fiscal year;
3. An actuary approves the amount of the refund;
4. The amount of refund is a fixed liability of the pool at the time the refund is declared; and
5. The board sets a date for the refund that shall not be less than 12 months after the end of the fiscal year in which the excess is reported.

R20-5-718. Financial Statements

A. A pool shall ensure that a financial statement is prepared annually at the end of its fiscal year by a certified public accountant who has experience in auditing insurance carriers or self-insured pools. The financial statement shall be accompanied by an actuarial report regarding reserves for claims and associated expenses, and claims incurred, but not reported.

B. A pool shall ensure that reported reserves in a financial statement are established based on 110% of an actuary's best estimate.

C. A pool shall ensure that an actuarial opinion is rendered by an actuary who is a member of the Academy of Actuaries (MAAA) or a fellow of the Casualty Actuarial Society (FCAS).

D. A pool shall ensure that the pool's annual financial statement described in subsection (A) is audited by a certified public accountant. The audit shall include:

1. An evaluation and statement from the certified public accountant whether invested surplus money was invested in compliance with R20-5-724;
2. A description of how the pool operates; and
3. A statement whether the pool complied with statutes and rules governing self-insured workers' compensation pools as it relates to financial matters.

E. Upon request by the Commission or within 120 days after a pool's fiscal year ends, a pool shall file its annual financial statement with the Commission. If a pool stops providing coverage on an ongoing basis or fails to file a renewal application for authorization to self-insure, then the pool shall provide its annual financial statement within 120 days after the pool's fiscal year ends.

R20-5-719. Board of Trustees

A. A pool shall be managed by a board of trustees consisting of at least five individuals elected for a stated term of office. At least 2/3 of a board shall be from the membership of the pool.

B. Minimum duties and responsibilities of a board. In addition to those duties and responsibilities provided by law, the duties of a board shall include:

1. Responsibility for all operations of a pool;
2. Ensuring compliance with this Article and the applicable provisions of the Arizona Workers' Compensation Act;
3. Hiring of an administrator to manage the daily operations of a pool;
4. Reviewing and taking action on applications for membership in a pool;
5. Contracting with a service company or seeking authorization from the Commission to process workers' compensation claims in-house;
6. Determining the premium to be charged to a member;
7. Investing surplus monies in compliance with this Article and other applicable law;
8. Enacting procedures that limit disbursement of money to payment and expenses associated with claims processing and administrative expenses necessary to conduct the operations of the pool;
9. Ensuring that the pool complies with statutory accounting principles (SAP) and provides accurate financial information to enable complete and accurate preparation of financial reports;
10. Maintaining all records and documents relating to the formation and ongoing operations of the pool; and
11. Ensuring that accounts and records of the pool are audited as required under this Article.

C. Delegation of board duties to administrator:

1. Except as prohibited by law, a board may delegate to an administrator the duties the board determines proper.
2. Delegation of duties from a board to an administrator shall be in writing. A copy of the delegation agreement shall be provided to the Commission with each renewal application.

D. Board prohibitions. A board or board trustee shall not commit or perform the following acts:

1. Extend credit to members for payment of a premium;
2. Utilize money collected as premiums for a purpose unauthorized by this Article;
3. Borrow money from a pool or in the name of a pool without providing written notice to the Commission of the nature and purpose of the loan; and
4. Approve admission into a pool an employer who has a negative net worth and whose admission would impair the ability of the pool to meet its financial obligations under the Arizona Workers' Compensation Act.

R20-5-720. Administrator; Prohibitions; Disclosure of Interest

A. An administrator of a pool shall not be a member of a board of trustees of a workers' compensation pool.

B. An administrator shall not commit any of the acts described in R20-5-719(D).

C. An administrator shall disclose to a board any actual or perceived employment or financial interest that the administrator or administrator's family has in any potential provider of services or insurance coverage to the pool. The administrator shall disclose the interest before a contract or agreement is reached with the company or business providing the service or coverage. If a pool has an existing contract or agreement in which a prospective administrator or administrator's family has an actual or perceived employment or financial interest, the administrator shall disclose the interest before accepting a position as administrator for the pool. It is the responsibility of a board to identify for a prospective administrator current providers of services and coverage to the pool.

R20-5-721. Admission of Employers into an Existing Workers' Compensation Pool

A. An employer that meets the requirements of A.R.S. §23-961.01 and this Article that seeks to join an existing pool shall submit an application for membership to the board of trustees of the pool, or the board's designee, on a form approved by the Commission.

B. Consideration of application by a board:

1. A board shall approve or deny admission in the pool according to the bylaws of the pool and other applicable statutes and rules.

2. Upon approval of admission of an employer by a board, the board shall transmit the original application of the employer and board resolution approving membership to the Commission for consideration and approval.

C. Commission Approval:

1. Except as provided in subsection (C)(2), within seven days after receiving an employer application described in subsection (B)(2), the Division shall advise the pool whether the employer application is complete. Within 45 days after receiving a complete employer application described in subsection (B)(2), the Commission shall consider the application and shall approve the admission of an employer into a pool if each of the following requirements are met:

- a. The employer meets the requirements of A.R.S. §23-961.01 and this Article;
- b. Admission of the employer into the pool does not impair the ability of the pool to meet the requirements of A.R.S. § 23-961.01 and this Article;
- c. Admission of the employer into the pool does not impair the ability of the pool to meet its financial obligations under the Arizona Workers' Compensation Act.

2. After a pool has completed one year of operation, the pool may request Commission authorization to admit new members without Commission approval. Within 30 days after receiving such a request, the Commission shall consider and approve the request to add members to a pool without Commission approval if the pool meets the following:

- a. The pool uses the similar industry requirement set forth in R20-5-710 and provides a list or description of businesses that the pool will consider as being similar; and
- b. The pool adopts as its own criteria for admission of new employers the criteria set forth in subsection (C)(1) and provides financial standards that the pool shall apply to employers seeking admission into the pool.

3. The Commission shall issue written findings and an order either approving or denying admission of an employer into a pool under subsection (C)(1) or approving or denying authorization to add members without Commission approval under subsection (C)(2). The Commission shall mail the findings and order upon the interested parties. The written findings and order is final unless a party files a request for hearing with the Administration Division within 10 days after the findings and order is issued. Hearing rights and procedure are governed by R20-5-736, R20-5-737, and R20-5-738.

D. Admission of an employer under subsection (C)(2).

1. A pool shall require an employer applying for membership in the pool to provide a financial report that is either a certified audited financial statement or an internally reviewed and signed financial statement certified by an officer or representative of the employer applying for membership.

2. If a pool approves admission of a new employer into the pool, the pool shall send written notice to the Commission, on a form approved by the Commission, within 10 days and prior to the effective date of membership, confirming that the pool has admitted a new member.

3. In addition to the notice required under subsection (D)(2), the pool shall also provide to the Commission, the board resolution approving membership and a copy of the employer's application for admission into the pool.

R20-5-722. Termination by a Member in a Pool; Cancellation of Membership by a Pool; Final Accounting

A. A member of a pool may terminate its participation in the pool or submit to cancellation by a pool under the bylaws of the pool and other applicable statutes and rules.

B. A pool shall provide the Commission written notice of a member's intent to terminate membership or a pool's intent to cancel a member's participation in the pool at least 30 days before the termination or cancellation is effective on a form approved by the Commission.

C. A pool shall provide a final accounting and settlement of the obligations of or refunds to a terminated or canceled member when all incurred claims are concluded, settled, or paid.

R20-5-723. Trustee Fund; Loss Fund

A. A pool shall maintain a trustee fund and a loss fund.

B. Trustee fund:

1. All premiums and assessments charged to members of a pool shall be paid to the trustee fund which fund shall be placed in a designated federally insured depository in Arizona.

2. A pool shall create a loss fund from the trustee fund.

3. A pool shall pay administrative expenses of the pool from the trustee fund.

~~4. Money from the trustee fund shall be transferred to the loss fund as needed to enable a pool to pay from the loss fund cash needs related to liabilities imposed or arising under the Arizona Workers' Compensation Act.~~

~~C. Loss fund:~~

~~1. A pool shall place its loss fund in a designated federally insured depository in Arizona.~~

~~2. A pool shall pay all workers' compensation expenses from the loss fund.~~

~~3. A loss fund shall be maintained at all times by an authorized service company or administrator charged with processing and paying workers' compensation claims.~~

~~4. A pool shall ensure that its loss fund is financially able to cover current cash needs related to liabilities imposed or arising under the Arizona Workers' Compensation Act.~~

R20-5-724. Investment Activity of a Pool

A pool may invest surplus money not needed for immediate cash needs under the following conditions:

1. Investments are limited to:

a. United States Government bonds;

b. United States Treasury notes;

c. Municipal and corporate bonds described under subsections (A)(2), (3), and (4);

d. Certificates of deposit;

e. Savings accounts in banks located in Arizona that are federally insured; and

f. Common or preferred stock.

2. Corporate and municipal bonds are restricted to the top three major investment grades as determined by two financial rating services;

3. Not more than 5% of a corporate municipal bond portfolio is invested in any one corporation or municipality;

4. Not more than 30% of the market value of a portfolio is in corporate and municipal bonds;

5. Not more than 20% of the market value of an investment portfolio is in common and preferred stocks; and

6. Not more than 5% of a common and preferred stock portfolio is invested in any one corporation.

R20-5-725. Service Companies; Qualifications; Contracts; Transfer of Claims

A. A pool shall obtain the services of a service company to process the pool's workers' compensation claims unless the pool obtains permission to process its own workers' compensation claims from the Commission under R20-5-726.

B. Qualifications of a service company:

1. A service company shall have facilities and equipment to manage, process, and store workers' compensation claims;

2. If required by law, a service company shall ensure that a licensed claims adjuster processes all workers' compensation claims. If a licensed claims adjuster is not required by law to process claims, then the service company shall ensure that workers' compensation claims are processed by persons with experience, training, and knowledge of the following:

a. Processing of Arizona workers' compensation claims; and

b. Arizona Worker's Compensation Act;

3. Service company personnel processing workers' compensation claims shall attend and complete training provided by the Commission Claims Division.

C. A service company shall process and pay each worker's compensation claim in compliance with the Arizona Workers' Compensation Act and the rules. A contract between a pool and service company shall include this requirement.

D. Transfer of claims from one service company to another service company:

1. The transfer of claims from one service company to another service company shall be handled in a way that does not interfere with or interrupt the processing of a worker's compensation claim.

2. A service company transferring a worker's compensation claim shall communicate to the new service company the historical claims processing activity associated with the worker's compensation claim, and shall provide an original or copy of every document required for continued processing of the worker's compensation claim.

3. A pool shall immediately provide written notice to the Industrial Commission Claims Division of any transfer of a worker's compensation claim from one service company to another.

R20-5-726. Processing of Workers' Compensation Claims by a Pool

~~A. The Commission shall permit a pool to process its own workers' compensation claims if the pool provides information and supporting documentation establishing the following:~~

- ~~1. The pool has facilities and equipment to manage, process, and store its own workers' compensation claims;~~
- ~~2. If required by law, a pool shall ensure that a licensed claims adjuster processes all workers' compensation claims. If a licensed claims adjuster is not required by law to process claims, then the pool shall ensure that workers' compensation claims are processed by persons with experience, training, and knowledge of the following:
 - ~~a. Processing of Arizona workers' compensation claims; and~~
 - ~~b. Arizona Workers' Compensation Act;~~~~
- ~~3. Pool personnel processing workers' compensation claims shall attend and complete training provided by the Commission Claims Division.~~

~~B. A pool shall pay and process workers' compensation claims in compliance with the Arizona Workers' Compensation Act and the rules.~~

R20-5-727. Loss Control and Underwriting Programs

~~A. A pool shall maintain during all periods of self-insurance a loss control program that includes, at a minimum, written safety requirements and training programs for all employees of members.~~

~~B. A pool shall maintain during all periods of self-insurance an underwriting program that enables the pool to calculate and determine workers' compensation premiums due and to discharge the pool's responsibilities under the Arizona Workers' Compensation Act and this Article.~~

~~C. A pool shall ensure those persons with education, experience, or training in loss control administer the loss control program.~~

~~D. A pool shall ensure those persons with education, experience, or training in underwriting administer the underwriting program.~~

~~E. A pool shall maintain facilities and equipment to implement the loss control and underwriting programs.~~

R20-5-728. Insufficient Assets or Funds of a Pool; Plans of Abatement; Notice of Bankruptcy

~~A. A pool shall immediately provide written notice to the Commission if collected premiums and earned investment income for a fiscal year are insufficient to pay benefits under the Arizona Workers' Compensation Act for all reported workers' compensation claims and expenses for the year. When a pool provides notice to the Commission of the deficiency, the pool shall also provide a written proposal to achieve 100% funding.~~

~~The proposal may include the following:~~

- ~~1. Use of premiums collected in other fiscal years, but not necessary for payment of claims or expenses in the year collected;~~
- ~~2. Use of investment earnings associated with other fiscal years, but not necessary for payment of claims or expenses in the year in which associated; or~~
- ~~3. Assessment of members.~~

~~B. The Commission shall review the proposal submitted under subsection (A) and approve the proposal within 10 days if the Commission determines that the proposal will abate the deficiency. A pool shall implement the plan no later than 30 days after the date the Commission approves the plan and shall achieve 100% funding within one year after the date the Commission approves the plan. Failure to implement the plan is cause for revocation of the pool's certificate of authority under R20-5-739.~~

~~C. If, as a result of an audit or examination by either a pool or the Commission, it appears that the assets of a pool are insufficient to enable the pool to discharge the pool's responsibilities under the Arizona Workers' Compensation Act and this Article, the Commission shall notify the administrator and the board of the deficiency and issue an order to abate the deficiency.~~

~~D. The Commission has authority to include in its order of abatement issued under subsection (C) a provision that a pool shall not add new members to the pool until the deficiency is abated.~~

~~E. Failure to comply with an order of abatement within 60 days after the order is issued constitutes cause for revocation of a pool's certificate of authority under R20-5-739.~~

~~F. A pool shall provide immediate written notice to the Commission of any bankruptcy filing by the pool.~~

R20-5-729. Arizona Office; Recordkeeping; Records Available for Review

~~A. A pool shall maintain an office in Arizona.~~

~~B. A pool shall ensure that all financial reports and minutes are signed by an authorized representative of the pool.~~

C. A pool shall make board meeting minutes, reports or other documents concerning payroll, audits, investments, experience rating, or other information concerning the pool available to the Commission upon request.

D. A pool shall retain records relating to the formation and operation of the pool. The pool's current board shall know the current location of the records.

E. Records of a pool are the property of the pool. If records of a pool are in the control or custody of a third party, the third party shall immediately surrender the records to a pool, upon request by the pool.

R20-5-730. Order for Additional Financial Information; Examination of Accounts and Records by Commission

If the Commission questions a pool's financial ability to pay workers' compensation claims under the Arizona Workers' Compensation Act, the Commission may order the pool to provide additional financial information from the pool's auditor or may order an independent financial examination of the pool.

R20-5-731. Assignment of Claims Under A.R.S. § 23-966; Obligation of Member to Reimburse the Commission

The Commission shall assign all workers' compensation claims of a pool to the State Compensation Fund under A.R.S. § 23-966 in the event that a pool files for bankruptcy or a pool is unable to process or pay benefits as required under the Arizona Workers' Compensation Act. In the event that the Commission assigns workers' compensation claims to the State Compensation Fund under A.R.S. § 23-966, the Commission shall have a right of reimbursement against any member of a pool for the amount paid by the State Compensation Fund for the member's claims and losses, including reasonable administrative costs, to the extent that such claims and losses are not covered by the pool's bonds or assets.

R20-5-732. Calculation and Payment of Taxes under A.R.S. § 23-961 and A.R.S. § 23-1065

A. Subject to subsection (B), the Commission shall determine the taxes to be paid under A.R.S. § 23-961(G) and A.R.S. § 23-1065(A) by calculating a pool's premiums using one of the following insurance plans selected by a pool:

1. Fixed premium plan:

- a. A plan in which neither losses nor incurred loss reserves are used to calculate a premium;
- b. A discount is allowed for premium size; and
- c. The taxable premium is calculated as follows: Payroll x applicable rate - premium discount.

2. Guaranteed cost plan:

- a. A plan that provides for a direct relationship, on an annual basis, of the premium for tax purposes and the experience modification rate developed to reflect the loss payments and incurred loss experience of an insured;
- b. The taxable premium is calculated as follows: (Payroll x applicable rate x experience modification rate) - premium discount.

3. Retrospective plan:

- a. A plan that provides for a relationship between the premium for tax purposes, the experience modification rate developed to reflect the loss payment and incurred loss experience of an insured, and the actual incurred losses for the tax year;
- b. Plan is calculated annually and premium is not subject to further adjustment during the tax year;
- c. The net taxable premium is calculated as follows: (payroll x applicable rate x experience modification rate x basic premium factor) + (losses for current year + adjusted losses for premium year x conversion factor) x tax multiplier; and
- d. The net taxable premium is subject to a maximum and minimum premium level depending on which one of the four rating insurance option plans specified in the rating system filed by the rating organization is used by the State Compensation Fund under A.R.S. Title 20, Chapter 2, Article 4;

B. A pool shall not select a retrospective plan unless the pool meets the following criteria:

1. The pool has an annual net taxable premium exceeding \$100,000; and
2. The pool submits and calculates four years of data concerning paid loss determinations and incurred loss reserved for each workers' compensation claim which information shall be used to calculate an experience modification factor for the pool. The oldest three years of data is used to calculate the rate and the current year data is used to calculate the tax.

C. A pool shall submit to the Commission information required on the following forms no later than February 15 of each year:

1. Self-insured Payroll Report, and
2. Self-insured Injury Report.

~~D. Payment of quarterly tax.~~

1. The Commission shall calculate quarterly taxes owed under A.R.S. § 23-961(H) or A.R.S. § 23-1065(A) in one of the following ways:
 - a. 25% of the tax calculated for the previous year and adjusted for changes in the tax rate;
 - or
 - b. Calculation based on actual payroll and premiums collected for each quarter.
2. A pool shall file a completed and signed Self-insurers' Quarterly Tax Payment Form with each quarterly tax payment.
3. Quarterly payments are due April 30, July 31, October 31, and January 31, for the periods ending March 31, June 31, September 30, and December 31, respectively.
4. Quarterly tax payments may be adjusted because of changes in the annual tax rate.

~~E. After receipt of the information required under A.R.S. § 23-961 and this Article, the Commission shall determine the annual taxes owed by a pool. The Commission shall also determine whether the pool has underpaid or overpaid the annual taxes required to be paid by the pool. If the quarterly tax payments paid by a pool are less than the actual tax calculated for the year, then the pool shall pay the difference on or before March 31 of the calendar year in which the taxes are due. If a pool has overpaid its annual taxes, then the Commission shall refund the amount as described in A.R.S. § 23-961(I). A pool shall pay to the Industrial Commission the pool's annual tax on or before March 31 based on premiums calculated for the preceding calendar year and adjusted for quarterly taxes previously paid.~~

~~F. In addition to the penalty described under A.R.S. § 23-961(J), failure to pay annual or quarterly taxes as required is cause for revocation of a pool's certificate of authority.~~

~~R20-5-733. Review of Initial and Renewal Applications for Authority to Self-insure by the Division~~

~~A. Upon the filing of a completed initial or renewal application for authority to self-insure, the Division shall review the initial or renewal application to determine and verify whether the information contained in and submitted with the initial or renewal application for authorization to self-insure is complete and accurate. The Division shall also review the information provided to determine the following:~~

1. Whether the pool has met the requirements of A.R.S. §23-961.01;
2. Whether the pool has met the requirements of this Article; and
3. Whether the pool has the ability to process and pay benefits required under the Arizona Workers' Compensation Act. A determination of a pool's financial ability to pay shall include a review of the ratios provided by each member at the time of an initial application and review of the following ratios for a pool at the time of renewal:
 - a. Total cash, receivables, and investments to total assets; and
 - b. Total revenue to total expenditures for loss fund and trustee fund.

~~B. The Division shall present the findings of its review described in subsection (A) to the Commission. The Division shall also present its recommendations to the Commission regarding an initial or renewal application.~~

~~R20-5-734. Decision by the Commission on Initial or Renewal Applications for Authority to Self-insure~~

~~A. The Commission shall consider the following before granting or denying an initial or renewal application to self-insure:~~

1. The information submitted by an applicant or pool;
2. The information and recommendations of the Division; and
3. The requirements of A.R.S. § 23-961.01 and this Article.

~~B. The Commission shall deny an application for authority to self-insure if the Commission finds one or more of the following conditions:~~

1. An applicant or pool does not meet the requirements of A.R.S. § 23-961.01;
2. An applicant or pool does not meet the requirements of this Article; or
3. An applicant or pool is unable to process and pay benefits required under the Arizona Workers' Compensation Act.

~~C. A decision of the Commission shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting. The Commission shall issue written findings and an order granting or denying authorization to self-insure.~~

~~D. The Division shall mail a copy of the Commission's written findings and order upon the applicant or pool within 10 days of the date the Commission issues its findings and order.~~

~~E. In the case of an initial application, an applicant shall substitute written confirmation from an authorized insurance carrier to provide fidelity coverage with evidence of fidelity insurance coverage as required under R20-5-712 no later than 10 days after the Commission grants authority to self-insure under this Section. The grant of authority to self-insure under this Section shall not become effective until the applicant provides evidence of actual fidelity coverage. The Commission shall deem an initial application withdrawn and the grant of authority to self-insure rescinded if an applicant fails to substitute written confirmation of fidelity coverage with evidence of fidelity coverage as required under this subsection.~~

~~F. In the case of an initial application, an applicant shall substitute written confirmation from an authorized insurance carrier to provide excess insurance coverage with evidence of excess insurance coverage as required under R20-5-715 no later than 10 days after the Commission grants authority to self-insure under this Section. The grant of authority to self-insure under this Section shall not become effective until the applicant provides evidence of actual excess insurance coverage. The Commission shall deem an initial application withdrawn and the grant of authority to self-insure rescinded if an applicant fails to substitute written confirmation of excess insurance coverage with evidence of excess insurance coverage as required under this subsection.~~

~~G. In the case of an initial application, an applicant shall deposit the guaranty bond, letter of credit, or other securities as required under R20-5-713 no later than 10 days after the Commission grants authority to self-insure under this Section. The grant of authority to self-insure under this Section shall not become effective until the applicant deposits the guaranty bond, letter of credit, or other security. The Commission shall deem an initial application withdrawn and the grant of authority to self-insure rescinded if an applicant fails to deposit the guaranty bond, letter of credit, or other securities as required under this subsection.~~

~~H. Subject to subsections (E), (F), and (G), no later than 10 days after the Commission grants authorization to self-insure, the Division shall prepare a certificate of authority to self-insure and shall mail the certificate to the self-insured at the business address of the pool listed on the initial or renewal application.~~

R20-5-735. Right to Request a Hearing

~~A. An applicant or pool shall have 10 days from the date the Commission mails the findings and order under R20-5-734 to request a hearing.~~

~~B. A request for hearing shall comply with A.R.S. § 23-945 and be signed by an authorized representative of the applicant or pool or the applicant's or pool's legal representative. The applicant or pool shall file the request for hearing with the Division.~~

~~C. The Commission shall deem its findings and order final if a request for hearing is not received by the Division within the time specified in subsection (A).~~

R20-5-736. Hearing Rights and Procedures

~~A. Burden of proof:~~

~~1. Except as provided in subsection (A)(2), in all proceedings arising out of this Article, the applicant or pool shall have the burden of proof to establish that it has met the requirements of A.R.S. § 23-901 et seq. and this Article.~~

~~2. In a revocation hearing, the Commission shall have the burden of proof to establish that the self-insured has committed the acts described in R20-5-739.~~

~~B. Roles of Chair and Chief Counsel:~~

~~1. The Chair of the Commission or designee shall preside over hearings held under this Article. Except as otherwise provided in this Section, the Chair shall apply the provisions of A.R.S. § 41-1062 to hearings held under this Article and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.~~

~~2. The Chief Counsel of the Commission shall represent the Commission in hearings held before the Commission and upon direction of the Chair of the Commission shall issue on behalf of the Commission all notices and subpoenas required under this Section. In the discretion of the Chief Counsel, the Chief Counsel may assign an attorney from the Legal Division of the Commission to represent the Division.~~

~~C. Appearance by a party:~~

~~1. Except as otherwise provided by law, the parties may appear on their own behalf or through counsel.~~

~~2. When an attorney appears or intends to appear before the Commission, the attorney shall notify the Commission, in writing, of the attorney's name, address, and telephone number and the name and address of the person on whose behalf the attorney appears.~~

D. Filing and service.

1. For purposes of this Section, a document is considered filed when the Commission receives the document. All documents required to be filed in this Section with the Commission shall be served upon the Chief Counsel of the Industrial Commission and upon all parties to the proceeding.
2. Except as otherwise provided in A.R.S. § 23-901, et seq. and this Article, service of all documents upon the Commission, applicant or pool shall be by personal service or by mail. Personal service includes delivery upon the Commission or party. Service by mail includes every type of service except personal service and is complete on mailing.

E. Notice of hearing.

1. The Commission shall give the parties at least 20 days notice of hearing.
2. A notice of hearing shall be in writing and mailed to the last known address of the applicant or pool as shown on the record of the Commission or upon the applicant's or pool's representative if a notice of appearance has been filed by a representative.
3. A notice of hearing shall comply with the requirements in A.R.S. § 41-1061(B).

F. Evidence.

1. The civil rules of evidence do not apply to hearings held under this Section.
2. A party may make an opening and closing statement with the permission of the Chair if the Chair determines that the statement will be helpful to a determination of the issues.
3. All witnesses at a hearing shall testify under oath or affirmation.
4. A party may present evidence and conduct cross-examination of witnesses.
5. Documentary evidence may be received into evidence and shall be filed no later than 15 days before the date of the hearing. Upon request or upon direction from the chair of the Commission, the Commission may issue a subpoena to the author of any document submitted into evidence to appear and testify at the hearing.
6. Upon written request by a party or upon direction from the Chair of the Commission, the Commission may issue a subpoena requiring the attendance and testimony of a witness whose testimony is material. A subpoena shall be requested no later than 10 days before the date of the hearing.
7. Upon written request by a party or upon direction from the Chair of the Commission, the Commission may issue a subpoena duces tecum requiring the production of documents or other tangible evidence. The written request by a party shall contain a statement explaining the general relevance, materiality, and reasonable particularity of the documentary or other tangible evidence and the facts to be proven by them.

G. Transcript of Proceedings. Hearings before the Commission shall be stenographically reported or mechanically recorded. Any party desiring a copy of the transcript shall obtain a copy from the court reporter.

R20-5-737. Decision Upon Hearing by Commission

A. A decision of the Commission to deny an initial or renewal application shall be based upon the grounds in R20-5-734(B) and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.

B. A decision of the Commission to revoke authority to self-insure shall be based upon the grounds in R20-5-739 and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.

C. A decision of the Commission to deny admission of an employer into a pool or deny authorization to add members without Commission approval shall be based upon the grounds in R20-5-721 and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.

D. After a decision is rendered at a public meeting, the Commission shall issue a written decision upon hearing which shall include findings of fact and conclusions of law, separately stated.

E. A Commission decision is final unless an applicant or pool requests review under R20-5-738 no later than 15 days after the written decision is mailed to the parties.

R20-5-738. Request for Review

A. A party may request review of a Commission decision issued under R20-5-737 by filing with the Commission a written request for review no later than 15 days after the written decision is mailed to the parties.

B. A request for review shall be based upon one or more of the following grounds which have materially affected the rights of a party:

1. Irregularities in the hearing proceedings or any order or abuse of discretion that deprives a party seeking review of a fair hearing;
2. Accident or surprise which could not have been prevented by ordinary prudence;
3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
4. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of, the hearing;
5. Bias or prejudice of the Division or Commission; and
6. The order, decision, or findings of fact are not justified by the evidence or are contrary to law.

C. A request for review shall state the specific facts and law in support of the request and shall specify the relief sought by the request.

D. The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.

E. The Commission's decision upon review is final unless an applicant or pool seeks judicial review as provided in A.R.S. §23-946.

R20-5-739. Revocation of Authority to Self-insure

A. In addition to those specific grounds set forth in this Article, the following constitute grounds for revocation of authority to self-insure for workers' compensation:

1. Failure to comply with requirements of this Article or applicable requirements of 20 A.A.C. 5, Article 1;
2. Failure to comply with applicable requirements of A.R.S. §23-901 et seq.;
3. Unless otherwise provided, failure to comply with an order or award of the Commission within 30 days after the order or award becomes final;
4. An inability to process and pay claims under the Arizona Workers' Compensation Act;
5. The failure of a pool to provide the Commission the reports and taxes required under this Article; and
6. The willful misstatement of any material fact in an application, report, or statement made to the Commission.

B. Upon receipt of information demonstrating that a pool has committed an act described in subsection (A), the Division shall conduct an investigation of the facts of the alleged misconduct. If, upon completion of the investigation, the Division determines that sufficient evidence exists to warrant revocation of a pool's authority to self-insure, then the Division shall present its findings to the Commission.

C. The Commission shall consider the findings and recommendation of the Division before revoking a pool's authority to self-insure.

D. The Commission shall revoke a pool's authority to self-insure if the Commission finds one or more of the grounds set forth in subsection (A). The Commission shall issue written findings and an order revoking the authority to self-insure and shall serve a copy of the findings and order upon the pool.

E. A pool shall have 10 days from the date the Commission serves the findings and order described in subsection (D) to request a hearing. The request for hearing shall comply with the requirements of A.R.S. § 23-945.

F. R20-5-736, R20-5-737, and R20-5-738 govern hearing rights and procedures for revocation hearings.

G. A pool shall immediately inform each of its members, in writing, of the Commission's order of revocation.

ARTICLE 11. SELF-INSURANCE FOR INDIVIDUAL EMPLOYERS

R20-5-1101. Definitions

In addition to the definitions provided in A.R.S. § 23-901, the following definitions apply to this Article:

"Act" means the Arizona Workers' Compensation Act, A.R.S. §23-901 et seq.

"Affiliate" or "affiliate relationship" means a person or entity that has the power to control, directly or indirectly, through one or more intermediaries, another person or entity.

"Anniversary date" means the date beginning one year from the initial effective date of the Authorization to Self-insure.

"Applicant" means an individual employer filing an initial application for authority to self-insure under A.R.S. § 23-961.

"Authorized signature" means the signature of an officer of the self-insurer.

"Cash-flow ratio" means a numerical relationship that reflects an ability to meet current financial obligations out of cash flow and is calculated by dividing funds provided by operations of a business by

current liabilities.

“Chief counsel” means the chief counsel for the Industrial Commission of Arizona.

“Claim” means a worker’s compensation claim.

“Claims Division,” means the Claims Division of the Industrial Commission of Arizona.

“Classification code” means a number assigned by an approved rating organization that classifies employees by type of job performed.

“Control” means the possession, direct or indirect, of power to direct or cause the direction of, the management and policies of a person or entity, whether through the ownership of voting securities, by contract, or otherwise.

“Current ratio” means a numerical relationship that reflects an ability to pay current obligations and is calculated by dividing current assets by current liabilities.

“Debt status ratio” means a numerical relationship that reflects the proportion of funds supplied internally relative to the funds contributed by creditors and is calculated by dividing net worth by total liabilities.

“Division” means the Accounting Division of the Industrial Commission of Arizona.

“Ex-medical plan” means a method of determining the premium upon which taxes are calculated that provides for rate revisions based upon the self-insurer operating a medical facility with a program for providing medical, surgical, or hospital services to a majority of the self-insurer’s employees and that complies with the requirements of A.R.S. § 23-1070. Neither losses nor incurred loss reserves are used in this plan.

“Excess insurance carrier” means an insurance carrier authorized to issue policies of excess insurance coverage to a self-insured employer.

“Experience modification rate” means a ratio comparing actual losses to expected losses based on a formula determined by an approved rating organization and which includes three years of loss information.

“Fixed premium plan” means a method of determining the premium upon which taxes are calculated in which neither losses nor incurred loss reserves are used for calculation. The only discount is for premium size.

“Fully-funded risk management fund” means a fund that maintains a positive equity balance that is sufficient to cover all of the fund’s actuarial losses.

“Guaranteed cost plan” means a method of determining the premium upon which taxes are calculated that provides for a direct relationship, on an annual basis, of the premium for tax purposes and the experience modification rate developed to reflect the loss payment and incurred loss experience of the self-insured employer.

“Individual employer” means an employer under the Act that is applying for authority to self-insure, or is approved to self-insure, that is not an entity described in A.R.S. §23-961.01; §11-952.01; or §41-621.01.

“Parent company” means one that owns sufficient stock in a subsidiary company to have voting control of the subsidiary company, as “control” is defined in this Article.

“Profitability ratio” means a numerical relationship that represents the return on assets and the efficiency of assets and is calculated by dividing profit before taxes by total assets, multiplied by 100 expressed as a percentage.

“Public entity” means an individual employer that is a state, county, municipality, school district, or any other entity with taxing authority.

“Quick ratio” means a numerical relationship that represents the degree to which liabilities are covered by the most liquid current assets and is calculated by dividing cash and equivalents, plus receivables, by current liabilities.

“Rating organization,” means an entity that meets the requirements of A.R.S. § 20-363, and is approved by the Arizona Department of Insurance to establish rates, codes, and formulas used to calculate worker compensation premiums.

“Resolution of Authorization” means a document issued by the Commission that grants authority to self-insure for purposes of workers’ compensation.

“Retrospective rating plan” means a method of determining the premium upon which taxes are calculated that provides for the relationship between the premium for tax purposes, the experience modification rate developed to reflect the loss payment and incurred loss experience of the self-insured employer, and the actual incurred losses for the tax year.

“Securities” or “security” means a guaranty bond, a bond of the United States or its agencies, United States’ Treasury Notes, a letter of credit, or Local Government Investment Pool (LGIP) funds, or appropriate documents renewing or continuing any of these.

~~“Self-insurer” or “self-insured” means an individual employer that the Commission authorizes to self-insure for workers’ compensation insurance under A.R.S. § 23-961.~~

~~“Working capital ratio” means a numerical relationship that measures the sufficiency of working capital to support sales and is calculated by dividing working capital by sales. Working capital is calculated by subtracting current liabilities from current assets.~~

R20-5-1102. Computation of Time

~~A. In computing any period of time prescribed or allowed by this Article, the day of the act or event from which the designated period of time begins to run is not included. The last day of the period computed is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays are excluded in the computation.~~

~~B. Except as otherwise provided by law, the Division may extend time limits prescribed by this Article for good cause. Any request for an extension of a time limit shall be submitted to the Division in writing at least 10 days before the expiration of the time limit for which an extension is sought.~~

R20-5-1103. Forms

~~The following forms are available upon request from the Division or from the Commission’s Internet site at www.ica.state.az.us, and include the following information for each:~~

~~A. Initial application for authority to self-insure:~~

- ~~1. Legal name of the applicant and requested effective date for authority to self-insure;~~
- ~~2. Mailing address and telephone number of applicant’s principal Arizona office and home office;~~
- ~~3. Name of state under which applicant is incorporated, if applicant is a corporation;~~
- ~~4. Name of parent company, if applicant is a subsidiary;~~
- ~~5. Name, address, and status of partners (general, special, and limited), if applicant is a partnership;~~
- ~~6. Length of time in business in Arizona and elsewhere, if applicable;~~
- ~~7. Nature or type of business in Arizona;~~
- ~~8. Arizona payroll data;~~
- ~~9. Current workers’ compensation insurance data, including current expiration date;~~
- ~~10. Statement of reasons for rejection or cancellation if an application for worker’s compensation insurance submitted by applicant has ever been rejected or a policy of workers’ compensation insurance held by the applicant has ever been cancelled;~~
- ~~11. Listing of states where self-insurance was denied, if any, and where the applicant is currently self-insured;~~
- ~~12. Arizona claims history and data for three years preceding application date;~~
- ~~13. Arizona loss history and experience modification rates for three years preceding application date;~~
- ~~14. Name of excess insurance carrier;~~
- ~~15. Name, address, and telephone number of third-party administrator or individual responsible for processing Arizona workers’ compensation claims;~~
- ~~16. Name and address of Arizona agent upon whom legal notice may be served;~~
- ~~17. Selection of tax plan;~~
- ~~18. Name, address, telephone and facsimile number, and email address of person responsible for completing the premium tax information;~~
- ~~19. Name, address, and telephone number of claims office where Arizona workers’ compensation claims will be processed;~~
- ~~20. Name, address, telephone and facsimile number, and email address of the primary and secondary points of contact for the application and self-insurance process;~~
- ~~21. Statement that all information and assertions contained in the application and the documents accompanying the application are factually correct and true; and~~
- ~~22. Listing of required attachments.~~

~~B. Workers’ compensation liability form:~~

- ~~1. Name of self-insurer;~~
- ~~2. Selection and calculation of required securities and excess insurance, which includes calculation and reporting the following:
 - ~~a. For all claims reported in the current calendar year, the number of open claims, total incurred liability, both medical and compensation, less the amount paid on these claims to~~~~

~~equal the remaining liability or amount owing on these claims;~~

~~b. For all open claims incurred in prior years and remaining open in the current year, the number of open claims, the total incurred liability, both medical and compensation, less the amount paid on these claims to equal the remaining liability or amount owing on these claims;~~

~~e. The total remaining liability on all open claims less any reimbursement for excess insurance ceded to equal the net remaining liability owing on all claims; and~~

~~d. The amount calculated in subsection (B)(2)(e) multiplied by 125%;~~

~~3. Name of excess insurance carrier that provides reimbursement to self-insurer; and~~

~~4. A statement by the Chief Financial Officer or Chief Executive Officer attesting to the truthfulness of the information contained in the Workers' Compensation Liability Form;~~

~~C. Self-insurance workers' compensation guaranty bond:~~

~~1. Name of self-insurer;~~

~~2. Name of the surety insurance company;~~

~~3. Description of the bond, bond number, amount, and conditions of obligation;~~

~~4. Statement regarding the responsibility for fees and costs associated with the collection of the bond and the responsibility for payment of any award or judgment against the surety; and~~

~~5. Request for authorized signatures and titles of self-insurer, surety, and agent or attorney-in-fact, and a notarized power of attorney, and date of signing.~~

~~D. Parent company guaranty:~~

~~1. Name and state of incorporation of parent company;~~

~~2. Name of self-insured subsidiary to be included in the guaranty;~~

~~3. Statement that the parent company will assume the workers' compensation liabilities of the subsidiary if the subsidiary is unable to honor these liabilities, which guarantee is for the benefit of and may be enforced by any and all employees of subsidiary; and~~

~~4. Corporate seal.~~

~~E. Self-insured payroll report:~~

~~1. Name of self-insured;~~

~~2. Tax plan selection;~~

~~3. Period covered by report;~~

~~4. Payroll description (classification codes, methods, and types of pay);~~

~~5. Amount paid for period covered by the report;~~

~~6. Statement that all information contained in the report is correct; and~~

~~7. Request for authorized signature, date, title, and telephone number of person signing the form.~~

~~F. Self-insured medical report:~~

~~1. Name of self-insured;~~

~~2. Period covered by report;~~

~~3. Amount paid relating to treatment of industrial injuries, including payment of medical personnel employed by the self-insurer and medical providers providing outside services;~~

~~4. Compensation paid to worker's compensation claimants;~~

~~5. Insurance premiums paid;~~

~~6. Total expenditures for workers' compensation and occupational disease claims;~~

~~7. Statement that all information contained in the report is correct; and~~

~~8. Request for authorized signature, date, title, and telephone number of person signing the form.~~

~~G. Self-insured hospital report:~~

~~1. Name of self-insurer;~~

~~2. Period covered by report;~~

~~3. Amount paid for operational expenses, including payroll, employee benefits, surgeon and physician fees, pharmacy costs, miscellaneous supplies and services, utilities, depreciation, licenses, and taxes;~~

~~4. Amount of revenue, including charges for inpatient and outpatient care, miscellaneous revenue, employee-paid premiums, and employer-paid premiums;~~

~~5. Reconciliation of cash account, including cash balance, total cash available, investments, operating expenses, disbursements, and net cash balance;~~

~~6. Statement that all information contained in the report is correct; and~~

~~7. Request for authorized signature, date, title, and telephone number of person signing the form.~~

~~H. Self-insured injury report:~~

1. Name of self-insurer;
2. Period covered by report;
3. Description of individual claims for the current year and three preceding years requiring payment greater than \$5,000.00 for each claim, including name of claimant, date of injury, nature of injury, accumulated amount paid, and the amount of any expenses incurred but not paid;
4. The total amount paid, and the amount of any expenses incurred but not paid, for the current year and three preceding years for all claims requiring a total payment less than \$5,000.00 for each claim;
5. Statement that all information contained in the report is correct; and
6. Request for authorized signature, date, title, and telephone number of person signing the form.

I. Quarterly tax payment:

1. Name and address of the self-insurer;
2. Designation of the applicable quarter;
3. Amount of annual tax paid in the previous calendar year; amount of the quarterly tax paid adjusted for any change in the tax rate for the applicable quarter;
4. Statement that all information contained in the form is correct; and
5. Request for authorized signature, date, title, and telephone number of person signing the form.

J. Notice of self-insurer's termination of self-insurance:

1. Name, address, and telephone number of self-insurer and all Arizona subsidiaries covered under the authority to self-insure, including if applicable:
 - a. Names and addresses of all Arizona operations or locations covered by self-insurance authority;
 - b. Names and addresses of all partners, if self-insurer is a partnership; and
 - c. Current and former names of self-insurer if the self-insurer has undergone a name change since the most recent effective date of the authority to self-insure;
2. Effective date of termination of authority to self-insure;
3. Name and address of workers' compensation insurance carrier providing coverage after the effective date of termination;
4. For the new coverage; effective date of workers' compensation coverage;
5. Statement that all information contained in the form is correct; and
6. Request for authorized signature, date, title, and telephone number of person signing the form.

K. Self-provider of medical benefits:

1. Indication of whether the self-insurer is, or is not, directing medical care for all of its employees;
2. If the self-insurer is directing medical care for its employees, the self-insurer shall:
 - (a) Attach a copy of all contracts between the self-insurer and the medical providers; or
 - (b) Submit a list of names and addresses of all medical providers with whom the self-insurer contracts; and
 - (c) The effective date of the agreements between the employer and medical provider; and
3. Authorized signature, date, and title of person signing the form.

R20-5-1104. Commission Approval to Act as Self-insurer

An employer does not have authority to act as a self-insurer under A.R.S. § 23-961 unless:

1. The Commission authorizes the employer to be self-insured; and
2. Except as provided in R20-5-1114, the employer posts security in an amount as required under this Article.

R20-5-1105. Resolution of Authorization

The Commission shall issue a Resolution of Authorization to an applicant that meets the requirements of this Article. The Commission shall annually review and renew a Resolution of Authorization to self-insure. The authority to self-insure is valid and continues in effect until the Commission takes action under this Article or the self-insured terminates its authorization to self-insure under R20-5-1136.

R20-5-1106. Time-frames

A. Administrative completeness review:

1. Initial application:
 - a. The Division shall review an initial application for authority to self-insure within 20 days of receipt of the application to determine whether the application contains the information required by A.R.S. §23-961 and this Article.

b. The Division shall inform the applicant by written notice if the application is incomplete. The Division shall include in its written notice to the applicant, a list of the missing information necessary to comply with this Article.

e. The Division shall deem the application withdrawn if the applicant fails to post security as required under this Article or fails to file a completed application within 10 days of being notified by the Division that the application is incomplete, unless the applicant obtains an extension to provide the missing information under subsection (D).

2. Request for renewal:

a. The Division shall review a request for renewal within 10 days of receipt of the request to determine whether the request contains the information in A.R.S. §23-961 and this Article.

b. The Division shall inform a self-insurer by written notice if the request for renewal is incomplete. The Division shall include in its written notice to the self-insurer, a list of the missing information necessary to comply with this Article, and the right to request an extension under subsection (D).

B. Substantive review:

1. Initial application. Within 70 days after the Division determines an initial application complete, the Commission shall determine whether the initial application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall issue either a Resolution of Authorization granting authority to self-insure, or an order denying authority to self-insure.

2. Request for renewal. Within 60 days after the Division receives all the required information under this Article, the Commission shall determine whether a request for renewal for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall renew the self-insurer's authority to self-insure, or issue an order denying or revoking authority to self-insure.

C. Overall time-frame:

1. Initial application. The overall time-frame is 90 days, unless extended under A.R.S. § 41-1072 et seq.

2. Request for renewal. The overall time-frame is 70 days, unless extended under A.R.S. § 41-1072 et seq.

D. If an applicant or self-insurer cannot timely submit to the Division information to complete an initial application or a request for renewal, the applicant or self-insurer may obtain an extension to submit the missing information by filing a written request with the Division. The written request for extension shall be filed no later than 10 days after receipt of the deficiency notice from the Division. The written request for an extension shall state the reasons the applicant or self-insurer is unable to meet the deadline. If an extension will enable the applicant or self-insurer to assemble and submit the missing information, the Division shall grant an extension of not more than 30 days and provide written notice of the extension to the applicant or self-insurer.

R20-5-1107. Initial Application under A.R.S. § 23-961

A. A public entity may file an initial application for authority to self-insure under A.R.S. § 23-961 if the public entity:

1. Provides an annual payroll in Arizona of at least \$2,000,000; and

2. Has total assets of at least \$50,000,000.

B. An individual employer that is not a public entity may file an initial application for authority to self-insure under A.R.S. §23-961 if the employer:

1. Is engaged in business in Arizona and has been for at least five years before the date of the initial application;

2. Provides an annual payroll in Arizona of at least \$2,000,000, including the combined payrolls of all subsidiary companies that will be under the self-insurance authorization;

3. Meets either of the following thresholds:

a. Has assets of at least \$50,000,000; or

b. Has \$10,000,000 in net worth and a cash flow ratio of at least .25.

C. The applicant for authority to self-insure shall complete and file with the Division a typewritten application form approved by the Division. An application is considered filed when it is received at the Division.

D. The authorized representative of the applicant shall sign and date the initial application.

~~E. The authorized representative signing the initial application shall verify, in writing, that the information submitted with the application is correct.~~

~~F. The Division shall deem an initial application for authority to self-insure complete if an applicant that is not a subsidiary company provides the following information with the initial application:~~

- ~~1. A statement from the board of directors or governing body:
 - a. Authorizing the filing of the application, and
 - b. Designating the person given authority to sign the application on behalf of the applicant;~~
- ~~2. A statement classifying the applicant's Arizona employees using the workers' compensation classification codes of the approved rating organization used by the Arizona State Compensation Fund;~~
- ~~3. A copy of the applicable hospital or medical agreement or a detailed statement of the arrangements between the employer and the medical provider, if medical care is directed under A.R.S. § 23-1070;~~
- ~~4. If the applicant is not a public entity, a copy of the applicant's audited financial statements or internally reviewed and signed financial statements for the most current and prior two fiscal years, including any notes to the financial statements;~~
- ~~5. If the applicant is a public entity, a copy of the applicant's audited financial statement for the most current and prior fiscal year; and~~
- ~~6. If the applicant is a public entity that qualifies for exemption under R20-5-1114(A), the certified statement required under R20-5-1114(B).~~

~~G. The Division shall deem an initial application for authority to self-insure complete if an applicant that is a subsidiary company provides the following information with the initial application:~~

- ~~1. The information required in Section (F);~~
- ~~2. A completed Parent Company Guaranty form signed by the authorized representative of the subsidiary's parent company;~~
- ~~3. A certified copy of the resolution of the parent company's board of directors authorizing a designated officer to complete, sign, and file the Parent Company Guaranty form; and~~
- ~~4. A copy of the parent company's audited financial statements for the most current and prior two fiscal years, including any notes to the financial statements.~~

R20-5-1108. Self-insurance Renewal

~~A. A self-insurer that is required to post security under this Article shall request renewal of authorization to self-insure with the Division 30 days before the self-insurer's anniversary date, by filing a Workers' Compensation Liability form. The Commission shall deem the request for renewal complete if the self-insurer provides the following:~~

- ~~1. A copy of the self-insurer's most recent audited annual financial statement or internally reviewed and signed financial statement or annual report. A parent company shall submit a copy of its most recent audited annual financial statement or annual report;~~
- ~~2. If the self-insured company is a subsidiary, a completed Parent Company Guaranty form signed and dated by the authorized representative of the parent company, or if the parent company of the subsidiary is different from the last filing approved by the Commission, a certified copy of the parent company board of director's resolution authorizing a designated officer to complete, sign, and file the Parent Company Guaranty form;~~
- ~~3. Per claim data to support the summary information on the Workers' Compensation Liability form. The self-insurer shall provide this information in the same format as in R20-5-1103(B)(2)(a) and (b);~~
- ~~4. Deposit of security as shown on the completed Worker's Compensation Liability form no later than the self-insurer's anniversary date subject to R20-5-1127 and R20-5-1128;~~
- ~~5. A certificate of excess insurance or a continuing certificate of existing excess insurance if the self-insurer takes a credit for excess insurance under R20-5-1109;~~
- ~~6. If medical care is directed under A.R.S. § 23-1070, a copy of the current medical or hospital medical agreement, or detailed statement of the arrangements, if not previously provided;~~
- ~~7. A statement of the total number of full-time and part-time Arizona employees;~~
- ~~8. If the Division determines that the self-insurer's denial rate exceeds 12% of claims filed, a statement from the self-insurer identifying the reason for each denial of a workers' compensation claim;~~
- ~~9. If the Division determines that the self-insurer's experience modification rate is greater than 1.10, a statement from the self-insurer identifying the reasons for that level of losses;~~

10. Name of the third-party administrator;
11. Principal location of the self-insurer in Arizona;
12. A description of the self-insurer's current business in Arizona and a description of any changes in the nature of business in Arizona in the past year;
13. List of any subsidiary company located in Arizona; and
14. Primary and secondary points of contact, including addresses, telephone numbers, facsimile numbers, and email information.

~~B. A self-insurer that is exempt from the requirement to post security, shall request renewal of authorization to self-insure by filing an annual statement described under R20-5-1114(B) no later than the employer's anniversary date. The Commission shall deem the request for renewal complete if the self-insurer provides the following:~~

- ~~1. Information required under subsections (A)(1), (A)(7) through (A)(10) and (A)(14); and~~
- ~~2. A certified statement that contains the information described in R20-5-1114 (A) and (B).~~

R20-5-1109. Security Deposit; Excess Insurance Policy

~~A. Except as provided in R20-5-1114, an applicant authorized to self-insure under this Article shall post security in the amount of at least \$100,000.00 under A.R.S. § 23-961. The self-insurer shall not reduce or offset this minimum amount by any credit for excess insurance.~~

~~B. Except as provided in R20-5-1114, and subject to the minimum security requirement of A.R.S. § 23-961, a self-insurer filing a request to renew its authority to self-insure under R20-5-1108 shall post security in an amount equal to 125% of its total estimated future liability, or in an amount determined by the Division under R20-5-1127.~~

~~C. Subject to review by the Commission, the self-insurer shall determine its total estimated liability by using the Workers' Compensation Liability form.~~

~~D. The Commission shall approve a credit for excess insurance against the amount of security required under this Article only if the following criteria are met:~~

- ~~1. The self-insurer satisfies the minimum security requirement of A.R.S. § 23-961;~~
- ~~2. The self-insurer does not reduce or offset the minimum security amount by an excess insurance;~~
- ~~3. The self-insurer calculates the credit on the Workers' Compensation Liability form;~~
- ~~4. The excess insurance policy contains a 60-day notice of termination;~~
- ~~5. The excess insurer does not have an affiliate relationship with the self-insurer;~~
- ~~6. The excess insurance policy provides that the insolvency of the self-insurer does not relieve the excess insurer of liability under the policy; and~~
- ~~7. The excess insurer posts a deposit under A.R.S. §23-961(D).~~

~~E. If an excess insurance provider gives the self-insurer notice of its intent to terminate the policy, the self-insurer shall immediately:~~

- ~~1. Provide written notice of the notice of termination to the Division; and~~
- ~~2. Deposit security as shown on the Worker's Compensation Liability form without credit for the excess insurance.~~

R20-5-1110. Posting of Guaranty Bond; Bond Amount; Effective Date

~~A. A self-insurer shall ensure that a guaranty bond or rider for the guaranty bond filed with the Division bears the same effective date as the effective date of the Resolution of Authorization to self-insure.~~

~~B. The Commission shall permit the self-insurer to post a guaranty bond or rider of the guaranty bond instead of other security if:~~

- ~~1. The insurance carrier providing the guaranty bond or rider submits the bond or rider to the Division on a form approved for use by the Division;~~
- ~~2. The guaranty bond is continuous in form;~~
- ~~3. The penal sum of the guaranty bond or rider equals the amount the self-insured must post as security under this Article;~~
- ~~4. The company issuing the guaranty bond or rider is authorized and licensed to transact the business of surety insurance in Arizona;~~
- ~~5. An authorized agent of the surety executes the guaranty bond or rider;~~
- ~~6. The bond is signed and dated by an authorized representative of the self-insurer;~~
- ~~7. The surety issuing the bond or rider does not have an affiliate relationship with the applicant or self-insurer; and~~
- ~~8. The surety issuing the guaranty bond or rider has a rating with A.M. Best of at least A-.~~

~~C. A guaranty bond or rider is subject to annual change based on unpaid liabilities as reported by the self-insurer on the Workers' Compensation Liability form.~~

~~R20-5-1111. Posting of Other Bonds or Treasury Notes of the United States Instead of Guaranty Bond; Registration; Deposit~~

~~A. Instead of providing a guaranty bond under R20-5-1110, a self-insurer may deposit with the Commission for transmittal through the Arizona State Treasurer to the Treasurer's designated bank, bonds or treasury notes of the United States of America if the bonds or treasury notes are guaranteed as to principal and interest by the United States of America or by any agency or instrumentality of the United States of America.~~

~~B. The self-insurer shall ensure that bonds or treasury notes of the United States of America deposited with Commission under this subsection are registered to: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws." The self-insured shall ensure that any contract between the self-insured and the custodial bank provides that the bonds or treasury notes are held for: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws."~~

~~C. If one or more of the self-insurer's claims are assigned to the state compensation fund under A.R.S. § 23-966, the Commission shall:~~

- ~~1. Collect or order collection of the principal, or market value of the security, whichever is greater, as it becomes due;~~
- ~~2. Sell or order the sale of the security or any part of the security; or~~
- ~~3. Apply or order the application of the proceeds to the payment of any unpaid obligations of the self-insurer, as determined by the Commission, in the event of the default in the payment of its obligations.~~

~~D. The self-insurer may arrange for interest on bonds or treasury notes of the United States of America deposited under this subsection to be paid to the self-insurer.~~

~~E. Bonds or treasury notes deposited according to this Article by a self-insurer shall be in an amount not less than the security deposit amount required under R20-5-1109.~~

~~R20-5-1112. Letter of Credit or Local Government Investment Pool Funds (LGIP)~~

~~A. Letter of Credit:~~

- ~~1. A self-insurer may satisfy the provision of R20-5-1110 by filing a letter of credit.~~
- ~~2. The self-insurer shall ensure that the letter of credit is registered to: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws."~~
- ~~3. The self-insurer shall ensure that the letter of credit is issued by a federal or Arizona chartered bank with an Arizona branch office or correspondent bank in Arizona upon which demand may be made and from which funds will be immediately payable on demand.~~
- ~~4. The letter of credit is acceptable only if:
 - ~~a. The letter includes the name and address of the self-insurer, including all Arizona subsidiaries;~~
 - ~~b. Is for a period of one year from the effective date;~~
 - ~~c. Includes a provision that the letter of credit automatically extends for consecutive periods of one year, unless the issuing bank provides written notice to the Division 30 days before the expiration of any one year term that the issuing bank will not renew the letter of credit for the additional period;~~
 - ~~d. Includes a provision that the written notice required in subsection (A)(4)(d) may be delivered to the Division or sent to the Division by United States Mail, certified mail return receipt requested;~~
 - ~~e. The letter of credit states the amount available under the letter of credit; and~~
 - ~~f. The self-insurer ensures that the letter of credit includes a statement that the sum available under the letter of credit shall be paid to the Industrial Commission of Arizona upon receipt by the issuing bank of a signed statement by an official of the Commission stating the following:
 - ~~i. The self-insurer has failed to comply with its workers' compensation obligations;~~
 - ~~or~~
 - ~~ii. The self-insurer has failed to renew or substitute acceptable security for its workers' compensation liability 15 days before the expiration of the letter of credit.~~~~~~

~~B. Local Government Investment Pool Funds (LGIP):~~

- ~~1. Instead of posting a guaranty bond, letter of credit, or United States of America bonds or Treasury Notes, a self-insured public agency may post a local government investment pool (LGIP)~~

~~fund only if:~~

- ~~a. The self-insurer ensures that the funds are deposited through the Arizona State Treasurer as custodian subject to the order of, and in trust for, the Industrial Commission of Arizona, registered and assigned to: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws;"~~
- ~~b. The LGIP funds posted as security in compliance with this Section are in an amount not less than the security deposit amount required under R20-5-1109;~~
- ~~e. The Commission has the ability to:
 - ~~i. Collect or order collection of the funds; and~~
 - ~~ii. Apply or order the application of the funds to the payment of any award rendered against the self-insurer, as determined by the Commission, if the self-insurer defaults in any of its obligations;~~~~
- ~~d. The self-insurer submits an assignment for the benefit of the Industrial Commission of Arizona, and an Endorsement-Receipt for Notice of Assignment, signed by the State of Arizona Treasurer and notarized. The Endorsement-Receipt shall contain the following language: Receipt is hereby acknowledged by the Treasurer of the State of Arizona of written notice of the assignment to the Industrial Commission ("Commission") of the above-identified account. We have noted our records to show the interest of the Commission in said account as shown in and by the above assignment. We have retained a copy of this document. We hereby certify that we have not received any notice of lien, encumbrance, hold, claim, or other obligation against the above-identified account prior to its assignment to the Commission. We further hereby waive any current or future right of set-off against such account. We agree to make payment as required by the Rules and Regulations of the Commission adopted in accordance with applicable laws and the law applicable to this institution.~~

~~2. Interest on the funds deposited under this Section may be remitted by the State of Arizona Treasurer directly to the self-insurer.~~

R20-5-1113. Substitution of Securities

~~The Commission may authorize the return a self-insurer's security deposit with written approval from the Division. The Commission shall not authorize the return or release of security unless the self-insurer substitutes the security with new security in an amount sufficient to satisfy the self-insurer's obligations under R20-5-1109.~~

R20-5-1114. Exemption from Requirement to Post Security

~~A. Conditions to qualify for exemption. A public entity applicant or public entity self-insurer is exempt from the requirements under this Article to post or provide security if the public entity:~~

- ~~1. Has a fully-funded risk management fund sufficient to cover actuarial liabilities for workers' compensation as determined by the self-insurer in accordance with Government Accounting Standards Board Statement #10; and~~
- ~~2. Provides funding to the risk management fund each year sufficient to cover actuarial liabilities for workers' compensation as determined by the self-insurer in accordance with Government Accounting Standards Board Statement #10.~~

~~B. Written request for exemption. A public entity applicant or public entity self-insurer that requests exemption from posting security shall file a certified statement along with its Workers' Compensation Liability form with the Commission before the effective date of initial self-insurance or before the anniversary date, if a renewal, that contains the following:~~

- ~~1. A statement that the public entity meets the conditions required under subsection (A);~~
- ~~2. A statement that the governing body of the public entity shall immediately notify the Commission and provide security required under this Article if the governing body learns that the risk management fund has insufficient funds to cover all workers' compensation liabilities of the public entity self-insurer;~~
- ~~3. The signatures of a majority of the members of the public entities' governing body; and~~
- ~~4. If the Commission has previously authorized the public entity to self-insure its workers' compensation obligations, a statement requesting the return of security previously posted or provided to the Commission, including a specific description of the type and amount of security previously posted or provided.~~

~~C. Approval or denial of request for exemption:~~

1. If the Commission determines that a self-insurer qualifies for exemption under this Section, the Division shall return to the self-insurer security previously posted or provided to the Commission, within 30 days after receiving written notice under subsection (B).

2. If the Commission denies a request for exemption under this subsection, the Commission shall provide written notice to the public entity within 10 days of the initial written request. The applicant or self-insurer has 10 days from the date the Commission's notice is received to request a hearing under A.R.S. § 23-945.

D. Failure to comply with conditions of exemption. The Commission shall order a self-insurer exempt under subsection (A) to immediately file with the Commission a completed, dated, and signed Workers' Compensation Liability form and post or provide security as required under this Article if any of the following occurs:

1. The self-insurer fails to file the certified statement to request renewal of self-insurance authority;

2. The self-insurer fails to comply with the conditions in subsection (A); or

3. The Commission determines, based upon receipt of information under subsection (B), or its own review, that the self-insurer's risk management fund has insufficient funds to cover all actuarial liabilities for workers' compensation liabilities of the self-insurer.

R20-5-1115. Rating Plans Available for a Self-insurer

A. A self-insurer shall use one of the following rating plans to calculate the premium taxes required under A.R.S. §§ 23-961 and 23-1065:

1. Fixed-premium plan;

2. Ex-medical plan;

3. Guaranteed-cost plan; or

4. Retrospective-rating plan.

B. The provisions of the rating plans apply only to operations and payroll in Arizona. The self-insurer shall combine all operations in Arizona as a single base to calculate any premium modification.

R20-5-1116. Fixed-Premium Plan; Formula; Eligibility; Necessary Information for Plan

A. The Division shall calculate the net taxable premium under a fixed-premium plan as follows: payroll multiplied by the applicable workers' compensation rate minus the premium discount.

B. A self-insurer shall use a fixed-premium plan to calculate its net taxable premium if:

1. The self-insurer elects this plan;

2. The self-insurer's annual net taxable premium does not exceed \$100,000; or

3. The self-insurer is not eligible for any other plan authorized by the Commission under this Article.

C. A self-insurer shall provide the following information in support of the fixed-premium plan:

1. Self-insurer's Payroll Report;

2. Self-insurer's Medical Report, and

3. Self-insurer's Quarterly Tax Payment form.

R20-5-1117. Ex-medical Plan; Formula; Eligibility; Necessary Information for Plan

A. The Division shall calculate the net taxable premium under an ex-medical plan as follows: [(payroll multiplied by the applicable workers' compensation rate) multiplied by (1 minus the ex-medical factor)] minus the premium discount.

B. A self-insurer may use the ex-medical plan if:

1. The self-insurer's program for medical, surgical, or hospital services meets the requirements of A.R.S. § 23-1070; and

2. The self-insurer's annual net taxable premium exceeds \$100,000.

C. A self-insured shall provide the following information in support of the plan submitted under this Section:

1. Self-insurer's Payroll Report;

2. Self-insurer's Hospital Report;

3. Self-insurer's Medical Report, and

4. Self-insurer's Quarterly Tax Payment form.

R20-5-1118. Guaranteed-Cost Plan; Formula; Eligibility; Necessary Information for Plan

A. The Division shall calculate the net taxable premium under a guaranteed-cost plan as follows: [(payroll multiplied by the applicable worker's compensation rate) multiplied by (the experience modification rate) minus the premium discount].

B. A self-insurer may use the guaranteed-cost plan if:

1. The self-insurer has an annual net taxable premium exceeding \$100,000; and
2. Uses an experience modification rate calculated as follows:
 - a. In the first year of self-insurance, the experience modification rate is 1.0;
 - b. In the second and third years of self-insurance, the Division calculates the experience modification rate based upon the loss data accumulated by the self-insurer during its term of self-insurance; and
 - c. In the fourth year of self-insurance and all following years, the Division calculates the experience modification rate based upon the most recent three years of loss data provided on the Self-insured Injury Report, excluding the most recent year.

C. A self-insurer shall provide the following information in support of the guaranteed-cost plan:

1. Self-insurer's Payroll Report;
2. Self-insurer's Medical Report;
3. Self-insurer's Injury Report; and
4. Self-insurer's Quarterly Tax Payment form.

R20-5-1119. Retrospective Rating Plan; Formula; Eligibility; Necessary Information for Plan

A. The Division shall calculate the net taxable premium under a retrospective rating plan as follows:

~~[(payroll multiplied by the applicable worker's compensation rate multiplied by the experience modification rate multiplied by the basic premium factor) added to (losses for the current year plus adjusted losses from the previous year) multiplied by (the loss conversion factor)] multiplied by the tax multiplier. The net taxable premium is subject to a maximum and minimum premium level.~~

B. A self-insurer may use the retrospective rating plan if:

1. The self-insurer has an annual net taxable premium exceeding \$100,000; and
2. The Division calculates the experience modification rate as follows:
 - a. In the first year of self-insurance, the experience modification rate is 1.0;
 - b. In the second and third years of self-insurance, the Division calculates the experience modification rate based upon the loss data accumulated by the self-insurer during its term of self-insurance; and
 - c. In the fourth year of self-insurance and all following years, the Division calculates the experience modification rate based upon the most recent three years of loss data provided on the Self-insured Injury Report, excluding the most recent year. The Division shall use the most recent year's data to calculate the actual premium tax.

C. A self-insurer shall provide the following information in support of the retrospective rating plan:

1. Self-insurer's Payroll Report;
2. Self-insurer's Medical Report;
3. Self-insurer's Injury Report; and
4. Self-insurer's Quarterly Tax Payment form.

R20-5-1120. Completion of Reports in Support of Tax Rating Plan; Calculation and Payment of Taxes Owed by Self-insurer under A.R.S. §§ 23-961 and 23-1065

A. A self-insurer shall submit to the Division the information required in R20-5-1116, R20-5-1117, R20-5-1118, or R20-5-1119 by February 15 of each year.

B. After receiving the information required under A.R.S. § 23-961, § 23-1065, and this Article, the Division shall determine the annual taxes owed by the self-insurer. The Division shall determine whether the self-insurer has overpaid or underpaid its taxes for the previous calendar year. If the total of the quarterly payments is less than the actual taxes for the year, the self-insurer shall pay the difference on or before March 31 of the calendar year in which the taxes are due. If the total of the quarterly payments exceeds the amount of the actual taxes for the year, then the Division shall refund the amount described in A.R.S. § 23-961 or § 23-1065 as applicable.

C. A self-insurer shall pay to the Commission the self-insurer's annual workers' compensation premium taxes on or before March 31 based on the net taxable premium calculated for the preceding calendar year. A self-insurer shall pay a premium tax of at least \$250.00 per calendar year.

D. The Division shall calculate a self-insurer's quarterly taxes owed under A.R.S. §§ 23-961 and 23-1065 in one of the following ways:

1. 25% of the tax calculated for the previous year; or
2. A calculation based on actual payroll and losses calculated for each quarter, using the same rating plan to calculate the quarterly payment as used to calculate the taxes required under A.R.S. §§ 23-961 and 23-1065. If the Division selects this method, the self-insurer shall submit quarterly payroll and loss information by classification code.

E. Quarterly tax payments are due April 30, July 31, October 31, and January 31 for the periods ending March 31, June 30, September 30, and December 31, respectively.

F. If the self-insurer fails to pay the annual or quarterly taxes to the Commission when due, the self-insurer shall pay a penalty of \$25.00 or 5% of the tax or payment due, whichever is more, plus interest at the rate of 1% per month from the date the tax or payment was due until paid.

R20-5-1121. Basis for Definitions, Classifications, Rating Procedures, and Plans

The Division shall use the definitions, classifications, rating procedures, and plans specified in the rating systems filed by the rating organization used by the State Compensation Fund under A.R.S. Title 20, Chapter 2, Article 4 in calculating the net taxable premium under A.R.S. §§ 23-961 and 23-1065.

R20-5-1122. Report, Book, Record, and Data Review by the Commission

A. All reports, books, records, and data of a self-insurer relating to classifications, payroll, incurred-loss reserves, calculation of premiums, completion of Workers' Compensation Liability form, and procedures for development of statistical information for the development of rating information are subject to review by the Commission or its authorized representative upon request.

B. A self-insurer shall ensure that the reports, books, records, and data described in subsection (A) are readily available for review by the Commission.

C. A self-insurer shall ensure that the reports, books, records, and data described in subsection (A) are clear, valid, and understandable.

R20-5-1123. Audit and Cost of Audit

The Commission may, at any time, perform or have performed for its benefit an audit of the payroll, loss payment, and loss reserve records for incurred losses of a self-insurer for the purpose of determining the scope and adequacy of the records. The entire cost of the audit shall be borne by the self-insurer.

R20-5-1124. Requirement to Provide Information to the Commission

A self-insurer shall make available to the Commission, upon request and at an office of the Commission, information described in this Article.

R20-5-1125. Notice to Commission of Location of Self-insurer's Claims Files

In addition to the requirements found in 20 A.A.C. 5, Article 1, a self-insurer shall advise the Claims Manager of the location of the self-insurer's open and closed workers' compensation claims files. Except for a claims file that is made available for copying and inspection under R20-5-131(C), if a self-insurer or third-party administrator intends to change the location of its claims files, the self-insurer shall provide written notice to the Claims Manager of the change in location at least 30 days before the files are moved.

R20-5-1126. Processing of Workers' Compensation Claims by a Self-insured Employer

The Claims Division shall permit a self-insurer to process its own workers' compensation claims if the self-insurer provides information and supporting documentation establishing the following:

1. The self-insurer has facilities and equipment to manage, process, and store its own information pertaining to the self-insurer's workers' compensation claims;
2. The self-insurer's workers' compensation claims are processed by persons with experience, training by the Claims Division, or knowledge regarding the Arizona Workers' Compensation Act; and
3. The persons processing the self-insurer's workers' compensation claims attend and complete training provided by the Claims Division.

R20-5-1127. Review of Initial Application and Request for Renewal to Self-insure

A. Upon the filing of a completed initial application or request for renewal, the Division shall:

1. Determine whether the applicant or self-insurer meets the requirements of A.R.S. § 23-961;
2. Determine whether the applicant or self-insurer meets the requirements of this Article. Except for a self-insurer that is exempt under R20-5-1114, the self-insurer shall post security according to R20-5-1109 that is adequate to provide for the self-insurer's future estimated liability. If applicable, the Division shall advise the applicant or self-insurer of the need for additional security, and the self-insurer shall post the additional security before the Commission makes its decision under R20-5-1128;
3. If a self-insurer requests a decrease of 10% or greater in the value or amount of security provided in the prior year, perform an additional review to determine the adequacy of the security deposit, including:
 - a. Mathematical verification of the accuracy of amounts reported on the Workers' Compensation Liability form;
 - b. Review of claims filed for the three preceding years;

- ~~e. Review of changes in the payroll of the self-insurer to determine changes in employment levels;~~
- ~~d. Review of changes in workers' compensation classification codes to determine changes in operations of the company in Arizona; and~~
- ~~e. Review of the financial condition of the self-insurer to determine changes in financial stability, including a review of the total incurred liability expenses for the past three years;~~
- 4. Determine whether the applicant or self-insurer has the ability to process and pay benefits required under the Arizona Workers' Compensation Act.
 - a. For an applicant that is not a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
 - i. ~~Reviewing the financial statements to determine the current ratio, quick ratio, cash-flow ratio, working-capital ratio, debt-status ratio, profitability ratio, and the applicant's net profit or loss;~~
 - ii. ~~Comparing the applicant's ratios with the ratios of existing self-insurers in the same or a closely related industry;~~
 - iii. ~~Reviewing notes to the financial statements;~~
 - iv. ~~Reviewing management reports of operations and other information provided by the self-insurer; and~~
 - v. ~~Comparing the applicant's ratio of claims filed to total employees with that of other employers within the same or closely related industry;~~
 - b. For an applicant that is a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
 - i. ~~Reviewing the public entity's general fund financial statement to determine the cash ratio and fund equity ratio;~~
 - ii. ~~Reviewing excess revenues over expenditures and the ending balances in the general fund and all fund accounts for the past two years;~~
 - iii. ~~Reviewing notes to the self-insurer's financial statements;~~
 - iv. ~~Reviewing management reports of operations and other information provided by the self-insurer;~~
 - v. ~~Comparing the public entity's ratio of claims filed to total employees with that of other public entities;~~
 - vi. ~~Comparing cash and fund equity ratios with that of other self-insured public entities; and~~
 - vii. ~~Reviewing the risk management fund to determine if it is sufficient to pay all workers' compensation liabilities;~~
 - e. For a self-insurer requesting renewal that is not a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
 - i. ~~Reviewing the information in subsection (A)(4)(a);~~
 - ii. ~~Reviewing the claims profile for the past three years, which includes a review of the claims filed, claims denied, and denial rate;~~
 - iii. ~~Reviewing of the self-insurer's experience modification rate;~~
 - iv. ~~Comparing of the self-insurer's ratio of claims filed to total employees with that of other self-insurer's; and~~
 - v. ~~Reviewing the Parent Company Guaranty form; and~~
 - d. For a self-insurer requesting renewal that is a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
 - i. ~~Reviewing the information in subsection (A)(4)(b);~~
 - ii. ~~Reviewing the claims profile for the past three years, including a review of the claims filed, claims denied, and denial rate;~~
 - iii. ~~Reviewing the self-insured's experience modification rate; and~~
 - iv. ~~Comparing the self-insurer's ratio of claims filed to total employees with that of other self-insured public entities of similar size.~~

B. The Division shall present the findings and recommendations of its review to the Commission, and may include a recommendation regarding the adequacy of the security based on its review and determination whether the self-insurer has the ability to process and pay as set forth in subsection (A)(3).

R20-5-1128. Decision by the Commission on Initial Application or Request for Renewal of Authorization to Self-insure

~~A. The Commission shall consider the following before granting or denying an initial application or request for renewal to self-insure:~~

- ~~1. The information submitted by an applicant or self-insurer;~~
- ~~2. The information and recommendations of the Division; and~~
- ~~3. The requirements of A.R.S. § 23-961 and this Article, including compliance with the requirement for posting additional security as recommended by the Division under R20-5-1127.~~

~~B. The Commission shall deny authority to self-insure if the Commission finds one or more of the following conditions:~~

- ~~1. The applicant or self-insurer does not meet the requirements of A.R.S. § 23-961,~~
- ~~2. The applicant or self-insurer does not meet the requirements of this Article, or~~
- ~~3. The applicant or self-insurer is unable to process and pay benefits under the Arizona Workers' Compensation Act.~~

~~C. The Commission may table consideration of, or action on, a request for renewal pending the self-insurer posting additional security based on a Division decision under R20-5-1127 that the posted security is insufficient.~~

~~D. Whether to grant, deny, or table an application for self-insurance authority shall be made by a majority vote of a quorum of Commission members present when the application for initial authority or renewal is presented at a public meeting.~~

~~E. If the Commission approves an initial application of an applicant that is not exempt under R20-5-1114:~~

- ~~1. The approval is contingent upon the self-insurer posting the required security;~~
- ~~2. After the Commission takes action under subsection (D), the Division shall provide written notice to the applicant that the Commission approves the application for self-insurance authority effective on a date certain;~~
- ~~3. The applicant shall provide to the Commission the required security before the effective date of the authority to self-insure; and~~
- ~~4. After the applicant complies with the requirements of subsection (E)(3), the Division shall mail a Resolution of Authorization to Self-insure to the last known business address of the applicant.~~

~~F. If an applicant fails to comply with the requirements of subsection (E)(3), the Commission shall not grant authority to self-insure and the Commission shall deem the initial application withdrawn.~~

~~G. If the Commission approves an initial application of an applicant exempt under R20-5-1114, the Division shall mail a Resolution of Authorization to Self-insure, to the last known business address of the applicant.~~

~~H. If the Commission approves a request for renewal of authority to self-insure, or tables consideration of the request for renewal, the Division shall mail written notice of the Commission's action on the request for renewal to the last known business address of the self-insurer.~~

~~I. If the Commission denies authority to self-insure, the Commission shall issue and mail written findings and an order to the last known business address of the applicant or self-insurer no later than 10 days after the Commission denies authority to self-insure.~~

~~R20-5-1129. Right to Request a Hearing~~

~~A. An applicant or self-insurer has 15 days from the date the Commission's findings and order is mailed to request a hearing.~~

~~B. A request for hearing shall comply with A.R.S. § 23-945 and be signed by an authorized representative of the applicant or self-insurer or the applicant's or self-insurer's legal representative. The applicant or self-insurer shall file the request for hearing with the Division.~~

~~C. The Commission shall deem its findings and order final if a request for hearing is not received by the Division within the time specified in subsection (A).~~

~~R20-5-1130. Hearing Rights and Procedures~~

~~A. Burden of proof.~~

- ~~1. Except as provided in subsection (A)(2), in all proceedings arising out of this Article, the applicant or self-insurer has the burden of proof to establish that it has met the requirements of A.R.S. § 23-901 et seq. and this Article.~~
- ~~2. In a revocation hearing, the Commission has the burden of proof to establish that the self-insurer has committed the acts described in R20-5-1133.~~

~~B. Roles of Chair and Chief Counsel.~~

- ~~1. The Chair of the Commission or designee shall preside over hearings held under this Article. Except as otherwise provided in this Section, the Chair shall apply the provisions of A.R.S. § 41-~~

~~1062 to hearings held under this Article and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.~~

~~2. The Chief Counsel of the Commission shall represent the Commission in hearings held before the Commission and upon direction of the Chair of the Commission shall issue on behalf of the Commission all notices and subpoenas required under this Section.~~

~~C. Appearance by a party:~~

~~1. Except as otherwise provided by law, a party to a hearing may appear on its own behalf or through counsel.~~

~~2. When an attorney appears or intends to appear before the Commission, the attorney shall file a notice of appearance.~~

~~D. Filing and service:~~

~~1. For purposes of this Section, a document is considered filed when the Commission receives the document. All documents required to be filed under this Section with the Commission shall be served upon the Chief Counsel of the Commission and upon all parties to the proceeding.~~

~~2. Except as otherwise provided in A.R.S. § 23-901, et seq. and this Article, service of all documents upon the Commission, applicant, or self-insurer shall be by personal service or mail. Personal service includes delivery upon the Commission or party. Service by mail includes every type of service except personal service and is complete on mailing.~~

~~E. Notice of hearing:~~

~~1. The Commission shall give the parties at least 20 days notice of hearing.~~

~~2. A notice of hearing shall be in writing and mailed to the last known address of the applicant or self-insurer as shown on the records of the Commission, or upon the applicant's or self-insurer's representative if a notice of appearance has been filed by a representative.~~

~~3. A notice of hearing shall comply with the requirements in A.R.S. § 41-1061.~~

~~F. Evidence:~~

~~1. The civil rules of evidence do not apply to hearings held under this Section.~~

~~2. A party may make an opening and closing statement with the permission of the Chair if the Chair determines that the statement will be helpful to a determination of the issues.~~

~~3. All witnesses at a hearing shall testify under oath or affirmation.~~

~~4. A party may present evidence and conduct cross-examination of witnesses.~~

~~5. The Commission Chair may admit documents into evidence if filed no later than 15 days before the date of the hearing. Upon request or upon direction from the Commission Chair, the Commission may issue a subpoena to the author of any document submitted into evidence to appear and testify at the hearing.~~

~~6. Upon written request by a party or upon direction from the Commission Chair, the Commission may issue a subpoena requiring the attendance and testimony of a witness whose testimony is material. A party shall submit its subpoena request no later than 10 days before the date of the hearing.~~

~~7. Upon written request by a party or upon direction from the Commission Chair, the Commission may issue a subpoena duces tecum requiring the production of documents or other tangible evidence. The written request by a party shall contain a statement explaining the general relevance, materiality, and reasonable particularity of the documentary or other tangible evidence and the facts to be proved by them.~~

~~G. Transcript of Proceedings. The Commission shall stenographically report or electronically record hearings. Any party desiring a copy of transcript shall obtain a copy from the court reporter. Any party desiring a copy of an electronic recording may obtain a copy from the Commission.~~

R20-5-1131. Decision Upon Hearing by the Commission

~~A. A decision of the Commission to deny authority to self-insure shall be based upon the grounds in R20-5-1128 and shall be made by a majority vote of the quorum of Commission members present at a public meeting.~~

~~B. A decision of the Commission to revoke authority to self-insure shall be based upon the grounds in R20-5-1133 and shall be made by a majority vote of the quorum of Commission members present at a public meeting.~~

~~C. The Commission shall issue a written decision after the hearing that shall include findings of fact and conclusions of law, separately stated.~~

~~D. The Commission decision is final unless an applicant or self-insurer requests review under R20-5-1132 no later than 15 days after the written decision is mailed to the parties.~~

R20-5-1132. Request for Review

~~A. A party may request review of a Commission decision issued under R20-5-1131 by filing with the Commission a written request for review no later than 15 days after the written decision is mailed to the parties.~~

~~B. A request for review of a Commission Decision shall be based upon one or more of the following grounds, which have materially affected the rights of a party:~~

- ~~1. Irregularities in the hearing proceedings or any order or abuse of discretion that deprives a party seeking review of a fair hearing;~~
- ~~2. Accident or surprise, which could not have been prevented by ordinary prudence;~~
- ~~3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;~~
- ~~4. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of the hearing;~~
- ~~5. Bias or prejudice of the Division or Commission; and~~
- ~~6. The order, decision, or findings of fact are not justified by the evidence or are contrary to law.~~

~~C. The request for review shall state the specific facts and law in support of the request and shall specify the relief sought.~~

~~D. The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.~~

~~E. The Commission's decision upon review is final unless an applicant or self-insurer seeks judicial review as provided in A.R.S. § 23-946.~~

R20-5-1133. Revocation of Authorization to Self-insure

~~A. The Commission may revoke a Resolution of Authorization to Self-insure for good cause. Good cause includes any of the following:~~

- ~~1. An inability or failure to process and pay any claim under the Arizona Workers' Compensation Act;~~
- ~~2. Failure of the self-insurer to pay any taxes levied by the Commission as required under A.R.S. §§ 23-961 and 23-1065 and this Article;~~
- ~~3. Failure of the self-insurer to comply with the requirements of this Article, including the failure of the self-insurer to:
 - ~~a. Promptly provide the Commission reports or other information required under this Article; and~~
 - ~~b. File the written Letter of Intent required under R20-5-1135;~~~~
- ~~4. Failure or deliberate refusal to comply with the applicable requirements of A.R.S. § 23-901 et seq.;~~
- ~~5. Failure to pay or comply with any award or order of the Commission after the award or order becomes final;~~
- ~~6. Willful misstating of any material fact in a tax report, application, renewal documentation, or other report or statement made to or filed with the Commission;~~
- ~~7. Failure or deliberate refusal to comply with the requirements of 20 A.A.C. 5, Article 1;~~
- ~~8. Failure to deposit or file security timely as specified in this Article; or~~
- ~~9. Failure to provide information or documentation necessary to timely renew the Authorization to Self-insure.~~

~~B. Upon receiving information that a self-insurer has committed an act described in subsection (A), the Division shall conduct an investigation of the facts of the alleged misconduct. If, upon completion of the investigation, the Division determines that sufficient evidence exists to warrant revocation of a self-insurer's authority to self-insure, the Division shall present its findings to the Commission.~~

~~C. The Commission shall consider the findings and recommendation of the Division before revoking a self-insurer's authorization to self-insure.~~

~~D. The Commission shall revoke a self-insurer's authority to self-insure if the Commission finds one or more of the grounds in subsection (A). The Commission shall issue written findings and an order revoking the Resolution of Authorization to Self-insure and shall serve a copy of the findings and order upon the self-insurer addressed to the last known address of the self-insurer as shown by the records of the Commission.~~

~~E. A self-insurer has 15 days from the date the Commission serves the findings and order described in subsection (D) to request a hearing. The request for hearing shall comply with the requirements of A.R.S. § 23-945.~~

F. R20-5-1130, R20-5-1131, and R20-5-1132 govern hearing rights and procedures for revocation hearings and review

R20-5-1134. Notice of Bankruptcy, Change in Ownership Status, or Change in Business Address

A. A self-insurer shall notify the Commission in writing within 24 hours of any bankruptcy filing under federal law or insolvency proceeding under any state's laws.

B. A self-insurer shall notify the Commission in writing within 24 hours of any change in the ownership status or business address of the employer.

R20-5-1135. Plan of Action for Retaining Self-insurance Authority in the Event of Insolvency or Bankruptcy

A. If a self-insurer becomes insolvent or files for protection under the United States Bankruptcy Code seeking to reorganize, and desires to remain self-insured, it shall file with the Division a written Letter of Intent regarding its intent to reorganize under the applicable provisions of the United States Bankruptcy Code:

1. If the self-insurer is incorporated, the chief executive officer shall sign the Letter of Intent and the board of directors shall approve the Letter if the corporation is still operating;
2. If the self-insurer is not incorporated, an authorized representative of the self-insurer shall sign the Letter of Intent; or
3. An attorney representing the entity in its bankruptcy reorganization case may sign the Letter of Intent instead of the chief executive officer or authorized representative.

B. The self-insurer shall file the Letter of Intent with the Division within 10 days of the initial bankruptcy filing or insolvency proceeding.

C. The self-insurer shall ensure that a provision addressing the self-insurer's obligations to workers' compensation claimants and the Commission is included in the Plan of Reorganization filed with the United States Bankruptcy Court. This Plan shall state the self-insurer's intentions and financial ability to continue self-insurance.

D. During the period between the initial bankruptcy filing and the approval of a Plan of Reorganization or Plan of Liquidation, the self-insurer may continue its self-insurance status only upon the demonstration of adequate protection to cover its current workers' compensation claims, or those claims that may come due before the Bankruptcy Court approves the Reorganization or Insolvency Plan. As part of the adequate protection for the Commission, the self-insurer shall post or deposit additional security in an amount the Commission deems necessary to pay claims currently pending or anticipated before the approval of the Plan of Reorganization or liquidation.

E. The self-insurer, or its legal representative, shall send a copy of the proposed Plan of Reorganization or Liquidation, including amendments to the Division.

F. The Commission may file an Objection to the Plan of Reorganization in the appropriate bankruptcy court and take other actions as permitted under the United States Bankruptcy Code if it determines that the Plan of Reorganization or Liquidation does not adequately provide for the processing and payment of the self-insurer's workers' compensation claims.

R20-5-1136. Notice of Self-insurer's Termination of Self-insurance

A. A self-insurer shall file with the Division a completed and signed Notice of Self-insurer's Termination of Self-insurance form, if the self-insurer decides to terminate its self-insurance. The Notice of Self-insurer's Termination shall be filed with the Division 30 days before the effective date of termination of self-insurance.

B. Before the effective date of the termination of self-insurance, the self-insurer shall file a certificate with the Claims Division designating an insurance carrier, or other proof, satisfactory to the Commission, of compliance with the requirements of A.R.S. § 23-961, to cover claims of the self-insurer that:

1. Are pending at that time the self-insurer terminates self-insurance; and
2. Occur after the effective date of the termination of self-insurance.

ARTICLE 15. WORKERS' COMPENSATION SELF-INSURANCE

R20-5-1501. Definitions

In addition to the definitions provided in A.R.S. § 23-901, the following definitions apply to this Article:

1. "Act" means the Arizona Workers' Compensation Act, A.R.S. § 23-901 et seq.
2. "Administrator" means an individual or organization designated by a Self-Insurance Pool Board to manage the daily operations of a Self-Insurance Pool.
3. "Agreement to Process and Pay" means a written agreement that requires an entity to process and pay or guaranty the payment of another entity's liabilities.

4. “Applicant” means an entity or pool seeking initial or renewal authority to self-insure for workers’ compensation, a Self-Insurance Pool seeking to add a new member, or a Self-Insurer seeking to Self-Administer.
5. “Authorization Date” means the date designated by the Commission on which self-insurance authority begins.
6. “Basic Premium Factor” means a factor used in the Retrospective Rating Plan formula to represent expenses of the Self-Insurer, such as acquisition, audit, administration, and profit or contingencies, but not taxes.
7. “Cash Flow Ratio” means a numerical relationship that reflects an entity’s ability to meet current financial obligations out of cash flow and is calculated as follows: (cash flow from operations) divided by (current liabilities).
8. “Claim” or “claim” means a workers’ compensation claim.
9. “Deviation Rate” means the rate applied to the Manual Premium to calculate a discount from the Manual Premium.
10. “D-Ratio” means a factor used in the Ex-Medical Plan that reflects the ratio of primary expected losses and total expected losses.
11. “Division” means the self-insurance office of the Commission.
12. “Ex-Medical Plan” means a method of determining the premium upon which taxes are calculated that provides for rate revisions based upon the Self-Insurer operating a medical facility with a program for providing medical, surgical, or hospital services to a majority of the Self-Insurer’s employees that complies with the requirements of A.R.S. § 23-1070.
13. “Experience Modification Rate” means a ratio comparing actual losses to expected losses based on a formula determined by an approved Rating Organization or the Commission.
14. “Fiscal Year” or “fiscal year” means a 12-month financial or accounting period.
15. “Fixed Premium Plan” means a method of determining the premium upon which taxes are calculated in which neither losses nor incurred loss reserves are used for the net taxable premium calculation.
16. “Guaranteed Cost Plan” means a method of determining the premium upon which taxes are calculated that provides for a direct relationship, on an annual basis, of the premium for tax purposes and the Experience Modification Rate developed to reflect the loss payment and incurred loss experience of the Self-Insurer.
17. “Local Government Investment Pool” means a pooled investment fund operated by the Arizona State Treasurer pursuant to A.R.S. § 35-326.
18. “Loss Conversion Factor” means a factor used in the Retrospective Rating Plan formula that is used to cover unallocated claims and the costs of the Self-Insurer’s claims services.
19. “Manual Premium” means the aggregate payroll by individual Payroll Classification Code multiplied by the Payroll Classification Rate.
20. “Member” or “member” means an employer described in A.R.S. §§ 11-952.01, 15-382 23-961.01, or 41-621.01 that has joined with other employers to operate a Self-Insurance Pool.
21. “Parent Company” means a company that has sufficient ownership in another entity (the Subsidiary) to have control, directly or indirectly, of the Subsidiary.
22. “Payroll” or “payroll” means the total wages and salaries paid by an employer.
23. “Payroll Classification Code” means a four-digit numerical code assigned by a Rating Organization or the Commission to differentiate between the various job duties or scope of work performed by employees.
24. “Payroll Classification Rate” means a rate assigned to an individual Payroll Classification Code by a Rating Organization or the Commission.
25. “Public Entity” means an individual employer that is a state, county, municipality, school district, or any other entity with taxing authority.
26. “Public Entity Pool” means a workers’ compensation pool organized under A.R.S. §§ 11-952.01, 15-382, or 41-621.01.
27. “Public Entity Trust Fund” means an internal service fund or sub-fund dedicated to workers’ compensation or risk management established by a Public Entity from which money is used to pay workers’ compensation claim liabilities and expenses.
28. “Rating Organization” means an entity that meets the requirements of A.R.S. § 20-363 and is approved by the Department of Insurance and Financial Institutions to establish rates, codes, and formulas used to calculate workers’ compensation premiums.

29. “Renewal Date” means the date designated by the Commission by which a renewal application shall be filed with the Division.
30. “Reserves” or “reserves” means an amount of money that is set aside to satisfy the financial and legal obligations associated with a workers’ compensation claim or group of claims.
31. “Resolution of Authorization” means a document issued by the Commission that grants authority to self-insure for purposes of workers’ compensation.
32. “Retrospective Rating Plan” means a method of determining the premium upon which taxes are calculated that provides for a relationship between the premiums for tax purposes, the Experience Modification Rate developed to reflect the loss payment and incurred loss experience of the Self-Insurer, and the actual incurred losses for the tax year.
33. “Security” or “security” means any financial instrument authorized by R20-5-1521 through R20-5-1524, or appropriate documents renewing, amending, or continuing any of these.
34. “Self-Administer” means the process under which a Self-Insurer administers its own claims, once approved by the Division.
35. “Self-Insurance Pool” means a Public Entity Pool or Similar Industry Pool.
36. “Self-Insurance Pool Board” means a body of individuals that directs a Self-Insurance Pool pursuant to R20-5-1527.
37. “Self-Insurer” means an entity authorized by the Commission to self-insure for workers’ compensation and may include a Public Entity, an individual private employer under A.R.S. § 23-961(A)(2), a Public Entity Pool, or a Similar Industry Pool.
38. “Similar Industry Pool” means a pool with members in similar industries as authorized by A.R.S. § 23-961.01.
39. “Subsidiary” means an entity of which a Parent Company has sufficient ownership to have control, directly or indirectly.
40. “Third-Party Administrator” means an organization that processes workers’ compensation claims for a Self-Insurer.
41. “Workers’ Compensation Pool Loss Account” means an account or sub-account in the Workers’ Compensation Pool Operations Account established by a Self-Insurance Pool from which money is used to pay workers’ compensation claims, liabilities, and expenses.
42. “Workers’ Compensation Pool Operations Account” means an account or sub-account into which premiums, investment proceeds, and other revenues are deposited for purposes of a Self-Insurance Pool.

R20-5-1502. Computation of Time; Extension of Time Limits

- A.** In computing any time period prescribed or allowed by this Article, the day of the event from which the time period begins to run shall not be included, but the last day of the period computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the time period prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall not be included in the computation of time.
- B.** Except as otherwise precluded by law, the Division may extend time limits prescribed by this Article for good cause. A request for an extension of a time limit shall be filed with the Division in writing and shall state the reasons for the request.

R20-5-1503. Forms and Reports

The following forms, available at <http://www.azica.gov> and upon request from the Division, shall be used when applicable:

1. Initial Application for Authority to Self-Insure Form
2. Self-Insurance Renewal Application Form
3. New Pool Member Application Form
4. Workers’ Compensation Liability Form
5. Application to Self-Administer Form
6. Self-Provider of Medical Benefits Form
7. Parent Guaranty Form
8. Workers’ Compensation Guaranty Bond Form
9. Statutory Deposit Agreement Form
10. Custody Agreement Form
11. Request for Waiver of Security Form
12. Notice of Termination of Self-Insurance Form

- 13. Annual Payroll Report Form
- 14. Annual Medical Report Form
- 15. Annual Injury Report Form
- 16. Annual Hospital Report Form
- 17. Quarterly Tax Payment Form

R20-5-1504. Self-Insurance Criteria

- A. A Public Entity may file an application for authority to self-insure if:**
- 1. The Public Entity's annual payroll is at least \$2 million; and
 - 2. The Public Entity's total assets are at least \$25 million.
- B. An individual employer that is not a Public Entity may file an application for authority to self-insure if:**
- 1. The employer has been engaged in business in Arizona for at least five consecutive years immediately before the prospective Authorization Date;
 - 2. The employer's annual Arizona payroll is at least \$2 million, including the combined payrolls of any Subsidiaries that will be covered by the self-insurance program; and
 - 3. The employer meets one of the following criteria:
 - a. The employer's total assets are at least \$25 million; or
 - b. The employer's net worth is at least \$5 million and Cash Flow Ratio is at least 0.25.
- C. A Public Entity Pool may file an application for authority to self-insure if:**
- 1. The requirements set forth in A.R.S. §§ 11-952.01, 15-382, or 41-621.01, as applicable, are satisfied;
 - 2. The combined annual payroll of the members of the Public Entity Pool is at least \$2 million; and
 - 3. The combined net worth of the members of the Public Entity Pool is at least \$1 million.
- D. A Similar Industry Pool may file an application for authority to self-insure if:**
- 1. The requirements set forth in A.R.S. § 23-961.01 are satisfied;
 - 2. The members of the Similar Industry Pool have been engaged in business in Arizona for at least five consecutive years immediately before the prospective Authorization Date;
 - 3. The combined annual Arizona payroll of the members of the Similar Industry Pool is at least \$2 million; and
 - 4. The combined net worth of the members of the Similar Industry Pool is at least \$1 million.

R20-5-1505. Initial Application Requirements

- A. An individual employer or pool seeking to apply for initial authority to self-insure shall file with the Division a completed Initial Application for Authority to Self-Insure Form and the documentation and information required in subsection B.**
- B. For an initial application to self-insure to be deemed complete, the following documentation and information shall be provided by the Applicant:**
- 1. A resolution of the Applicant's board of directors or governing body, authorizing the filing of the application. If the Applicant does not have a board of directors or governing body, an authorized representative shall sign the resolution.
 - 2. A list of the aggregate payroll by Payroll Classification Code for the most current and prior two fiscal years.
 - 3. A copy of the Applicant's audited financial statements for the most current and prior two fiscal years, including any notes to the financial statements. If audited financial statements for the most current or prior two fiscal years are not reasonably available, internally-reviewed and signed financial statements that conform with Generally Accepted Accounting Principles may be substituted. If a new Self-Insurance Pool does not have the financial statements required by this subsection, the pool shall provide detailed projections for capitalization, cash flow, and liabilities of the pool.
 - 4. A detailed description of the Applicant's loss control program, including a description of existing or planned occupational safety and health requirements and training programs.
 - 5. Except for a new Self-Insurance Pool that does not have the information required by this subsection, a loss run of all claims incurred in Arizona from the most current complete calendar year and the prior three calendar years. The loss run must include the following information, if applicable, for each incurred claim: Payroll Classification Code, Commission claim number, employee name, date of injury, total paid medical, medical reserves, total paid indemnity (including death benefits), and indemnity reserves.

6. If applicable, copies of excess insurance policies that meet the requirements of R20-5-1526, or written confirmation from an authorized insurance company that it will provide excess insurance coverage to the Applicant by the prospective Authorization Date.
7. Except for a new Self-Insurance Pool that does not have the information required by this subsection, if the Applicant's Experience Modification Rate specific to Arizona for the most recent complete fiscal year is greater than 1.10, a written statement describing the causes of the inflated Experience Modification Rate and outlining remedial measures the Applicant has taken or will take to lower the Experience Modification Rate.
8. Except for an Applicant seeking to Self-Administer under R20-5-1510, a copy of a signed agreement between the Applicant and a Third-Party Administrator or, if an agreement has not been completed, a written confirmation from a Third-Party Administrator that it will contract with the Applicant on or before the prospective Authorization Date to process workers' compensation claims for the Applicant.
9. If an Applicant is seeking to Self-Administer, a completed Application to Self-Administer Form and the information and documentation required in R20-5-1510(C).
10. If an eligible Applicant intends to direct medical care under A.R.S. § 23-1070, a completed Self-Provider of Medical Benefits Form, the detailed statement of the arrangements required in A.R.S. § 23-1070(B), and a copy of the current medical or hospital agreements, if applicable.
11. If the Applicant is a Public Entity or a Public Entity Pool seeking a waiver of security under R20-5-1525, a completed Request for Waiver of Security Form and a current actuarial report that satisfies the requirements in R20-5-1513(B).
12. If the Applicant is a Subsidiary:
 - a. A completed Parent Guaranty Form or an Agreement to Process and Pay signed by a designated representative of the Parent Company that guarantees the payment of the Subsidiary's obligations.
 - b. A resolution of the Parent Company's board of directors or governing body authorizing the designated representative to complete, sign, and file the Parent Guaranty Form or Agreement to Process and Pay. If the Parent Company does not have a board of directors or governing body, an authorized representative shall sign the resolution.
 - c. A copy of the Parent Company's audited financial statements for the most current and prior two fiscal years, including any notes to the financial statements. If audited financial statements for the most current or prior two fiscal years are not reasonably available, internally-reviewed and signed financial statements that conform with Generally Accepted Accounting Principles may be substituted.
13. If the Applicant is a Self-Insurance Pool:
 - a. The contract or agreement required under A.R.S. §§ 11-952.01, 15-382, 23-961.01, or 41-621.01, as applicable, to establish the pool.
 - b. The articles of incorporation and bylaws governing the pool, if applicable.
 - c. The participation, coverage, and indemnity agreements between the pool and each member.
 - d. Written authorization from the board of directors or governing body of each member, authorizing membership in the pool. If a member does not have a board of directors or governing body, an authorized representative shall sign the written authorization.
 - e. A signed resolution from the Self-Insurance Pool Board approving each member for membership in the pool.
 - f. An original or a certified copy of fidelity or crime insurance policy that meets the requirements of R20-5-1528 or written confirmation from an authorized insurance company that it will issue the required fidelity or crime insurance policy on or before the prospective Authorization Date.
 - g. A copy of the signed agreement or contract of hire between the Self-Insurance Pool Board and the designated Administrator.
 - h. A detailed description of the underwriting program required under R20-5-1529.
 - i. A current actuarial report that meets the requirements of R20-5-1513(B) and documents the rate structure needed to set member premium levels to adequately cover potential losses and expenses of the pool.
 - j. For each member, a schedule showing, for the most recent complete fiscal year and the prior two fiscal years, net workers' compensation premiums paid, total workers' compensation losses incurred, and, if available, Experience Modification Rate specific to Arizona.

- k. A copy of each member's audited financial statements for the most current and prior two fiscal years, including any notes to the financial statements. If audited financial statements for the most current or prior two fiscal years are not reasonably available, internally-reviewed and signed financial statements that conform with Generally Accepted Accounting Principles may be substituted.
- L. If any member's Experience Modification Rate specific to Arizona for the most recent complete fiscal year is greater than 1.10, a written statement describing the causes of the inflated Experience Modification Rate and outlining remedial measures the member has taken or will take to lower the Experience Modification Rate.

R20-5-1506. Renewal Application Requirements

- A. A Self-Insurer seeking to apply for renewal of authority to self-insure shall file with the Division a completed Self-Insurance Renewal Application Form and the documentation and information required under subsection B on or before the Renewal Date or, if applicable, the date specified in subsection D.
- B. For a renewal application to be deemed complete, the following documentation and information shall be provided by the Applicant:
 - 1. A copy of the Applicant's most-recent audited financial statements completed pursuant to R20-5-1513(A), including any notes to the financial statement.
 - 2. A completed Workers' Compensation Liability Form.
 - 3. A current loss run of all open claims incurred in Arizona on or after the Authorization Date. The loss run must include the following information, if applicable, for each claim: Payroll Classification Code, Commission claim number, employee name, date of injury, total paid medical, medical reserves, total paid indemnity (including death benefits), indemnity reserves, excess insurance carrier name (if applicable), amount of excess credit expected (if applicable), and excess insurance self-insured retention amount per occurrence (if applicable).
 - 4. If applicable, copies of excess insurance policies that meet the requirements of R20-5-1526 or written confirmation from an authorized insurance company that it will provide excess insurance coverage to the Applicant. For each claim accepted by an excess insurance carrier on or after the Authorization Date, documentation to establish claim acceptance. For each claim submitted to an excess insurance carrier that is pending review by the excess insurance carrier, documentation to establish claim submission.
 - 5. If the Applicant's Experience Modification Rate specific to Arizona for the most recent complete fiscal year is greater than 1.10, a written statement describing the causes of the inflated Experience Modification Rate and outlining remedial measures the Applicant has taken and will take to lower the Experience Modification Rate.
 - 6. If the Applicant's denial rate exceeds 12% of claims filed during the prior approved period of self-insurance, a written statement from the Applicant identifying the reason(s) for each denial.
 - 7. Except for Applicants that have been approved to Self-Administer or are seeking to Self-Administer under R20-5-1510, a copy of the signed agreement between the Self-Insurer and a Third-Party Administrator, if different from the last filing approved by the Commission.
 - 8. If an Applicant intends to Self-Administer, regardless of whether the Applicant has been previously approved to Self-Administer, a completed Application to Self-Administer Form and current information and documentation required under R20-5-1510(C).
 - 9. If an eligible Applicant directs or intends to direct medical care under A.R.S. § 23-1070, a completed Self-Provider of Medical Benefits Form, the detailed statement of the arrangements required in A.R.S. § 23-1070(B), and a copy of the current medical or hospital agreements, if applicable.
 - 10. If the Applicant is a Public Entity or a Public Entity Pool that is seeking a waiver of security under R20-5-1525, a completed Request for Waiver of Security Form and a current actuarial report that satisfies the requirements in R20-5-1513(B).
 - 11. If the Applicant is a Subsidiary, a copy of the Parent Company's most-recent audited financial statements, including any notes to the financial statements. If audited financial statements are not reasonably available, internally-reviewed and signed financial statements that conform with Generally Accepted Accounting Principles may be substituted.
 - 12. If the Applicant is a Subsidiary and the Parent Company has changed since the last application or renewal approved by the Commission:

- a. A completed Parent Guaranty Form or Agreement to Process and Pay signed by a designated representative of the Parent Company that guarantees the payment of the Subsidiary's obligations.
- b. A resolution of the Parent Company's board of directors or governing body authorizing the designated representative to complete, sign, and file the Parent Guaranty Form or Agreement to Process and Pay. If a Parent Company does not have a board of directors or governing body, an authorized representative shall sign the resolution.

13. If the Applicant is a Self-Insurance Pool:

- a. Updated copies of the documentation and information required in R20-5-1505(B)(13)(a)-(c), (g), and (h), if changed since the last filing approved by the Commission.
 - b. A current actuarial report that meets the requirements of R20-5-1513(B).
 - c. An original or a certified copy of the Self-Insurance Pool's current fidelity or crime insurance policy that meets the requirements of R20-5-1528.
- C. A complete renewal application submitted to the Division before the Self-Insurer's Renewal Date shall serve to extend existing authority to self-insure until the earliest of the following: (1) the date the Commission takes action on the application pursuant to R20-5-1509; (2) the date the Self-Insurer terminates self-insurance under R20-5-1518; or (3) the date the renewal application is withdrawn.**
- D. Upon written request, the Commission may temporarily extend the duration of an existing authorization to self-insure for up to 90 days after a designated Renewal Date if the Self-Insurer is working in good faith to file a complete renewal application with the Division and additional time is necessary to file a complete renewal application.**
- E. If a Self-Insurer does not file a complete renewal application on or before the Renewal Date or the date specified in subsection D, if applicable, or a renewal application is deemed withdrawn, self-insurance authority ceases and the individual employer or each member of the pool shall provide the Commission proof of compliance with A.R.S. § 23-961(A) not later than ten days after the Self-Insurer's Renewal Date, the date specified in subsection D, or the date the renewal application is withdrawn, whichever is later.**

R20-5-1507. New Member Application Requirements for Self-Insurance Pools

- A. Except as authorized in subsection C, a previously authorized Self-Insurance Pool seeking to add a new member shall file with the Division a completed New Pool Member Application Form and the documentation and information required in subsection B.**
- B. For a new member application to be deemed complete, the following documentation and information shall be provided by the Applicant:**
1. A resolution of the Self-Insurance Pool Board authorizing the filing of the New Pool Member Application Form.
 2. The documentation and information listed in R20-5-1505(B)(2), (B)(5), (B)(7), (B)(13)(c) through (e), and B(13)(j) through(l) specifically pertaining to the employer seeking to join the Self-Insurance Pool.
- C. An approved Self-Insurance Pool in good standing that has operated for one year or more may admit new members without Commission approval. Upon admission of a new member into a Self-Insurance Pool under this subsection, the Self-Insurance Pool shall provide to the Division a list of the new member's coverage locations and the documentation and information listed in R20-5-1505(B)(13)(c) through (e) specifically pertaining to the new member.**

R20-5-1508. Processing of Initial, Renewal, and New Member Applications

- A. The Division shall administratively review an initial, renewal, or new member application within 20 days of receipt of the application to determine if the application is complete. If the application is incomplete, the Division shall notify the Applicant in writing of the missing documentation or information necessary to comply with this Article.**
- B. The Division shall deem an initial, renewal, or new member application withdrawn if the Applicant fails to file a complete application within 30 days of being notified by the Division that the application is incomplete pursuant to subsection A or fails to submit requested information or documentation within 30 days of receiving a request under subsection F.**
- C. Unless the substantive review time frame is extended under A.R.S. § 41-1075, the Commission shall determine whether an initial, renewal, or new member application meets the substantive criteria of A.R.S. §§ 11-952.01, 15-382, 23-961, 23-961.01, and 41-621.01, and this Article, as applicable, within 60 days after the initial, renewal, or new member application is deemed complete.**

- D. The overall timeframe for processing initial, renewal, and new member applications is 80 days, unless extended under A.R.S. § 41-1072 et seq.
- E. Upon the filing of a complete initial, renewal, or new member application, the Division shall review the submitted documentation and information and:
1. Evaluate and determine whether the Applicant meets the requirements of A.R.S. §§ 11-952.01, 15-382, 23-961, 23-961.01, and 41-621.01 and this Article, as applicable;
 2. Evaluate and determine whether the Applicant has the financial ability to process and pay benefits required under the Act;
 3. Evaluate and determine whether a waiver of security is appropriate under R20-5-1525 or, if security is required, the appropriate amount of security; and
 4. If the Division recommends approval of an initial or renewal application, evaluate and determine a recommended term of self-insurance, which may not be less than one year or more than two years from the date of Commission approval under R20-5-1509.
- F. The Division may request an Applicant to provide additional information and documentation reasonably related to the Division's review and evaluation under subsection E.
- G. The Division shall consider the following information in determining whether two or more employers meet the "similar industry" requirement in A.R.S. § 23-961.01(A):
1. The two-digit sector designation of the most recent edition of the North American Industry Classification System assigned to the employers;
 2. The extent to which the employers are engaged in business involving similar products, services, activities, and processes; and
 3. Other relevant information describing or concerning the business of the employers.
- H. The Division shall present its evaluation, findings, and recommendations pursuant to subsection E to the Commission.

R20-5-1509. Commission Review of Initial, Renewal, and New Member Applications

- A. The Commission shall consider the following before approving or denying an initial, renewal, or new member application:
1. The documentation and information submitted by Applicant pursuant to R20-5-1505, R20-5-1506, R20-5-1507, or R20-5-1508(F);
 2. The evaluation, findings, and recommendations of the Division pursuant to R20-5-1508; and
 3. The requirements of A.R.S. §§ 11-952.01, 15-382, 23-961, 23-961.01, and 41-621.01 and this Article, as applicable.
- B. The Commission may approve or deny an initial, renewal, or new member application or may remand an application to the Division for further review or to request additional information or documents pursuant to R20-5-5-1508(F). A decision to approve, deny, or remand an application shall be made by a majority vote of a quorum of Commission members present at a public meeting.
- C. When approving an initial or renewal application, the Commission shall determine: (1) the term of self-insurance authorization, which may not be less than one year or more than two years from the date of Commission approval; (2) whether to grant a waiver of security under R20-5-1525; and (3) if security is required, the amount of security that must be posted. The Commission shall require an amount of security that reasonably reflects the Self-Insurer's future total estimated liability and is sufficient to fully protect the Special Fund in the event of an assignment under A.R.S. § 23-966, which amount may exceed the amounts specified in R20-5-1520(A).
- D. The Commission shall deny an initial, renewal, or new member application if the Commission finds either of the following:
1. The Applicant does not meet the requirements of A.R.S. §§ 11-952.01, 15-382, 23-961, 23-961.01, and 41-621.01 or this Article, as applicable; or
 2. The Applicant is unable to process and pay benefits required under the Act.
- E. On or before the Authorization Date, following Commission approval of an initial application for self-insurance authority, or within 30 days after Commission approval of a renewal or new member application, a Self-Insurer shall:
1. Unless the Commission has granted a waiver of security under R20-5-1525, post required security;
 2. Secure excess insurance coverage that meets the requirements of R20-5-1526, if applicable;
 3. Either obtain Division approval to Self-Administer under R20-5-1510 or complete the process of contracting with a Third-Party Administrator; and
 4. For Self-Insurance Pools, secure an active fidelity or crime insurance policy, unless the pool is exempt pursuant to R20-5-1528(C).

- F. Upon approval of an initial, renewal, or new Member application, the Division shall serve a Resolution of Authorization on the Applicant no later than 30 days after Commission approval. The Resolution of Authorization approving an initial application shall contain the Authorization Date, the applicable Renewal Date, and the amount of security required. The Resolution of Authorization approving a renewal application shall contain the applicable Renewal Date and the amount of security required. The Resolution of Authorization approving addition of a new member shall contain the amount of additional security the Self-Insurance Pool is required to post. The Resolution of Authorization may be electronically signed by the Commission.
- G. If the Commission denies an initial, renewal, or new member application, the Commission shall issue and serve written findings and an order on the Applicant no later than 30 days after the Commission denial. The findings and order may be electronically signed by the Commission.
- H. If an Applicant's current Experience Modification Rate specific to Arizona exceeds 1.10, the Commission may approve authorization to self-insure that is contingent upon the Applicant receiving, within six months of the Commission's approval, occupational safety and health services from either the Arizona Division of Occupational Safety and Health or a qualified occupational safety and health professional. Upon written request and for good cause shown, the Division may extend the six-month deadline for receiving safety and health consultation services.
- I. A Self-Insurer shall maintain all security, insurance policies, and contracts required under this Article during an approved period of self-insurance and while a renewal application is pending before the Commission.

R20-5-1510. Processing of Workers' Compensation Claims; Authorization to Self-Administer

- A. A Self-Insurer shall utilize a Third-Party Administrator to process workers' compensation claims unless the Division authorizes the Self-Insurer to Self-Administer.
- B. A Self-Insurer seeking to Self-Administer shall file with the Division a completed Application to Self-Administer Form and all documentation and information required under subsection C.
- C. The Division, in consultation with the Claims Division of the Commission, shall authorize a Self-Insurer to Self-Administer if the Self-Insurer provides documentation and information establishing the following:
 1. The Self-Insurer has facilities and equipment sufficient to manage, process, and store its own information pertaining to the Self-Insurer's workers' compensation claims;
 2. The Self-Insurer's workers' compensation claims are processed by persons with experience, training, and knowledge regarding the processing of Arizona workers' compensation claims and the requirements of the Act and applicable administrative rules; and
 3. The persons processing the Self-Insurer's claims have completed the Claims Division's workers' compensation training program within the prior two years.
- D. The Division shall administratively review an application to Self-Administer within 20 days of receipt to determine if the application is complete. If the application is incomplete, the Division shall notify the Applicant in writing of the missing documentation or information necessary to comply with this section.
- E. The Division shall deem an application to Self-Administer withdrawn if the Applicant fails to file a completed application within ten days of being notified by the Division that the application is incomplete pursuant to subsection D.
- F. Unless the substantive review time frame is extended under A.R.S. § 41-1075, the Division shall determine whether an application to Self-Administer meets the substantive criteria of subsection C within 30 days after the application to Self-Administer is deemed complete.
- G. The overall timeframe for processing an application to Self-Administer is 50 days, unless extended under A.R.S. § 41-1072 et seq.
- H. Upon approval of an application to Self-Administer, the Division shall serve a certificate of authorization on the Applicant no later than 30 days after approval.
- I. The Division shall revoke a certificate of authorization to Self-Administer if the Self-Insurer no longer satisfies the requirements in subsection C.
- J. If the Division denies a request to Self-Administer or revokes a certificate of authorization, the Division shall issue and serve written findings and an order on the Applicant no later than 30 days after the denial or revocation.
- K. Authorization to Self-Administer shall continue until any of the following occurs: (1) self-insurance authority ceases; (2) the Self-Insurer contracts with a Third-Party Administrator to process workers' compensation claims; or (3) authority to Self-Administer is revoked by the Division.

R20-5-1511. Location of Claims Files

A Self-Insurer shall provide written notice to the Division regarding the location of the Self-Insurer's open and closed claims files within 90 days of the Authorization Date. If a Self-Insurer or Third-Party Administrator intends to change the location of its claims files, the Self-Insurer shall provide written notice to the Division of the change in location at least 30 days before the files are moved.

R20-5-1512. Reports, Books, Records, and Data Review by the Commission; Audit

- A. All reports, books, records, minutes, and data of a Self-Insurer relating to matters governed by the Act and this Article are subject to review by the Commission or its authorized representative upon request. A Self-Insurer shall ensure that reports, books, records, minutes, and data relating to matters governed by the Act and this Article are accurate and maintained in a legible and understandable manner.
- B. The Commission may, upon notice of three days, perform or have performed for its benefit an audit of the reports, books, records, minutes, and data of a Self-Insurer relating to matters governed by the Act and this Article. The Commission shall be responsible for the cost of an audit.

R20-5-1513. Financial Statements and Actuarial Reports

- A. A Self-Insurer shall ensure that audited financial statements are prepared annually at the end of the Self-Insurer's fiscal year by a certified public accountant experienced in auditing financial statements.
- B. Actuarial reports and studies required in this Article must be completed by an actuary that is a member of the American Academy of Actuaries (MAAA) or a fellow of the Casualty Actuarial Society (FCAS). At a minimum, actuarial reports must address claim reserves, supplemental reserves, and actuarial liabilities using an expected confidence level and a discount rate consistent with Actuarial Standard of Practice No. 20 (or a successor standard).
- C. Upon request, a Self-Insurer shall file its most-recent annual audited financial statements or actuarial report with the Division.

R20-5-1514. Claim Processing and Reserving

- A. Self-Insurers and Third-Party Administrators shall ensure that claims are processed and benefits are paid in compliance with the Act and applicable administrative rules.
- B. Self-Insurers and Third-Party Administrators shall adopt and adhere to industry-standard reserving practices and maintain claim reserves at the full undiscounted value of each claim, including related claim expenses.

R20-5-1515. Notice of Adverse Condition, Bankruptcy, Change in Ownership Status, or Change in Business Address

- A. A Self-Insurer shall notify the Division in writing within ten days of any adverse condition or material change that impacts or could impact the Self-Insurer's ability to process and pay benefits required under the Act. When a Self-Insurer provides notice to the Commission under this subsection, the Self-Insurer shall provide a written proposal to correct the actual or potential adverse condition or material change.
- B. A Public Entity Pool shall notify the Division within 30 days of receipt of any notification from the Director of the Department of Insurance and Financial Institutions pursuant to A.R.S. §§ 11-952.01(N) and 41-621.01(L).
- C. A Self-Insurer shall notify the Division in writing within ten days of any bankruptcy filing under federal law or insolvency proceeding under any state's laws.
- D. A Self-Insurer shall notify the Division in writing within 30 days of any change in the ownership status or business address of the Self-Insurer.

R20-5-1516. Revocation of Self-Insurance Authorization

- A. The Commission may revoke authorization to self-insure for good cause. Good cause for revocation includes, but is not limited to, any of the following:
1. Impairment of the solvency of the Self-Insurer;
 2. An inability or failure to process and pay benefits required under the Act, including the failure to pay or comply with any award of the Commission;
 3. The failure of the Self-Insurer to respond within ten days to a demand by the Commission to substitute security when the posted security is unsatisfactory or insufficient in amount or character;
 4. The failure of the Self-Insurer to pay tax assessments levied by the Commission within 30 days of the due dates prescribed by A.R.S. §§ 23-961 and 23-1065;

5. The failure of the Self-Insurer to promptly provide the Commission with notices or information required under this Article;
 6. The failure of the Self-Insurer to comply with the Act or administrative rules contained in Title 20, Chapter 5, Articles 1, 13, 14 and this Article;
 7. The willful misstating of material fact in any documentation or information provided to the Commission;
 8. The failure of a Public Entity Pool to comply with the recommendations of the Director of the Department of Insurance and Financial Institutions within 60 days of the date of notice issued under A.R.S. §§ 11-952.01(N) and 41-621.01(L); or
 9. Except for a Self-Insurer approved to Self-Administer, the failure to contract with or adequately fund a Third-Party Administrator for claim processing and payment.
- B.** Upon receiving information indicating that any of the grounds for revocation described in subsection A may apply, the Division shall conduct an investigation. If, upon completion of the investigation, the Division determines that sufficient evidence exists to warrant revocation of authorization to self-insure, the Division shall promptly present its findings and recommendations to the Commission.
- C.** The decision of the Commission to revoke authorization to self-insure shall be made by a majority vote of a quorum of Commissioners present at a public meeting. The Commission shall issue and serve written findings and an order revoking self-insurance authority no later than ten days after the Commission vote. The findings and order may be electronically signed by the Commission.

R20-5-1517. Retaining Authorization to Self-Insure Through Insolvency or Bankruptcy

- A.** If a Self-Insurer becomes insolvent or files for protection under the United States Bankruptcy Code seeking to reorganize, and desires to remain self-insured, it shall file with the Division a written statement regarding its intent to reorganize under the applicable provisions of the United States Bankruptcy Code. The statement shall discuss in detail the Self-Insurer's financial ability to continue self-insurance.
- B.** A Self-Insurer shall file the statement described in subsection A with the Division within ten days of the insolvency or bankruptcy filing. The letter shall be signed by an authorized representative of the Self-Insurer.
- C.** A Self-Insurer seeking to retain authorization to self-insure through bankruptcy shall ensure that a provision addressing the Self-Insurer's obligations to workers' compensation claimants and the Commission is included in the plan of reorganization filed with the United States Bankruptcy Court.
- D.** During the period between the initial bankruptcy filing and a final bankruptcy court determination, the Self-Insurer may continue its self-insurance status only after demonstrating to the Commission ongoing ability to process and pay benefits required under the Act. The Commission may require the Self-Insurer to post additional security in an amount the Commission deems appropriate to fully protect the Special Fund in the event of an assignment under A.R.S. § 23-966, which amount may exceed the amount specified in R20-5-1520(A).
- E.** A Self-Insurer shall file with the Division a copy of any proposed plan of reorganization or liquidation, including amendments, within ten days of filing.

R20-5-1518. Voluntary Termination of Self-Insurance Authorization

- A.** A Self-Insurer voluntarily terminating self-insurance shall file a completed Notice of Termination of Self-Insurance Form at least 30 days before the effective date of the termination.
- B.** If a Self-Insurer voluntarily terminates self-insurance, the individual employer or each member of a Self-Insurance Pool shall provide the Commission proof of compliance with A.R.S. § 23-961(A) not later than ten days after the termination is effective.

R20-5-1519. Withdrawal from a Self-Insurance Pool; Termination of Membership by a Self-Insurance Pool

- A.** A member of a Self-Insurance Pool may voluntarily withdraw from a Self-Insurance Pool or a Self-Insurance Pool may terminate an employer's membership in a Self-Insurance Pool under the bylaws of the Self-Insurance Pool and applicable law.
- B.** A Self-Insurance Pool shall provide the Commission written notice of a member's intent to withdraw from a Self-Insurance Pool or a Self-Insurance Pool's intent to terminate an employer's membership in a Self-Insurance Pool at least 30 days before the withdrawal or termination is effective.
- C.** If a member of a Self-Insurance Pool withdraws from a Self-Insurance Pool or a Self-Insurance Pool terminates an employer's membership in a Self-Insurance Pool, the terminated or withdrawing member shall provide the Commission proof of compliance with A.R.S. § 23-961(A) not later than ten days after the termination or withdrawal is effective.

R20-5-1520. Security Amount and Type; Apportionment Credit; Excess Insurance Credit; Release

- A.** Except as provided in R20-5-1525, and subject to the minimum requirements in A.R.S. § 23-961:
1. A newly approved Self-Insurer shall post security in an amount equal to the prior three-year average of annual total paid medical and indemnity benefits, unless the Commission requires a different amount pursuant to R20-5-1509(C).
 2. A Self-Insurer renewing authority to self-insure shall post security in an amount equal to 125% of its total estimated future indemnity and medical liability as calculated on the Workers' Compensation Liability Form, unless the Commission requires a different amount pursuant to R20-5-1509(C).
 3. A Self-Insurance Pool adding a new member shall post security in an amount equal to the prior three-year average of annual total paid medical and indemnity benefits of the new member, unless the Commission requires a different amount pursuant to R20-5-1509(C).
- B.** Except as provided in R20-5-1525, a Self-Insurer shall post a type of security authorized in R20-5-1521 through R20-5-1524. A Self-Insurer or former Self-Insurer may substitute one type of authorized security with a different type of authorized security.
- C.** The Commission shall approve a credit for apportionment against the amount of security required under this Article, which credit may not result in an amount of security that is less the minimum security required by A.R.S. § 23-961, if the Self-Insurer provides proof that apportionment has been approved for one or more claims.
- D.** The Commission shall approve a credit for excess insurance against the amount of security required under this Article, which credit may not result in an amount of security that is less the minimum security required by A.R.S. § 23-961, if:
1. The excess insurance requirements in R20-5-1526(A) are satisfied;
 2. The Self-Insurer provides proof that excess insurance coverage exists for incurred claims;
 3. The Self-Insurer has timely notified the excess insurance carrier of the incurred claims or the excess insurance carrier has accepted the incurred claims;
 4. The excess insurance carrier has not denied coverage for the incurred claims; and
 5. The excess insurance carrier is solvent.
- E.** The Self-Insurer shall calculate apportionment or excess insurance credits using the Workers' Compensation Liability Form.
- F.** Subject to A.R.S. § 23-961(A)(2), a former Self-Insurer may request a reduction in the amount of security that must remain posted with the Commission by filing a written request with the Division. The written request must attach the information specified in R20-5-1506(B)(1)-(4). The Division may request additional information and documentation reasonably related to the Division's review and evaluation under subsection G.
- G.** Upon the filing of a request to reduce the amount of security by a former Self-Insurer, the Division shall review the documentation and information and:
1. Evaluate and determine whether the former Self-Insurer has the financial ability to process and pay benefits required under the Act for claims that were incurred during the period of self-insurance; and
 2. Evaluate and determine an appropriate amount of security to fully protect the Special Fund in the event of an assignment under A.R.S. § 23-966.
- H.** The Division shall present its evaluation, findings, and recommendations pursuant to subsection G to the Commission. The Commission may approve a reduction in the amount of security, deny a reduction, or remand an application to the Division for further review or to request additional documentation or information. A decision of the Commission shall be made by a majority vote of a quorum of Commission members present at a public meeting.

R20-5-1521. Guaranty Bond; Effective Date

A Self-Insurer may post a guaranty bond or rider of a guaranty bond as security if:

1. The insurance carrier providing the guaranty bond submits the bond to the Commission on the Workers' Compensation Guaranty Bond Form, which is signed by an authorized representative of the Self-Insurer and the insurance carrier;
2. Any rider of a guaranty bond is signed and dated by an authorized representative of the insurance carrier and the Self-Insurer;
3. The penal sum of the guaranty bond or rider is no less than the amount the Self-Insurer is required to post as security under this Article;

4. The insurance carrier issuing the guaranty bond or rider is authorized to transact the business of surety insurance in Arizona by the Department of Insurance and Financial Institutions;
5. The insurance carrier issuing the guaranty bond or rider does not have an affiliate relationship with the Self-Insurer;
6. The insurance carrier issuing the guaranty bond or rider has a rating with A.M. Best of at least A-; and
7. The guaranty bond or rider bears the same effective date as the Authorization Date.

R20-5-1522. Letter of Credit

A. A Self-Insurer may post a letter of credit as security if:

1. The letter of credit is registered to: “The Industrial Commission of Arizona, in trust for the fulfillment by [INSERT SELF-INSURER’S NAME] of its obligations under the Arizona Workers’ Compensation laws”;
2. The bank issuing the letter of credit is a federal or Arizona-chartered bank upon which demand may be made and from which funds will be immediately payable on demand;
3. The letter of credit includes the name and address of the Self-Insurer;
4. An authorized representative of the issuing bank executes the letter of credit;
5. The original letter of credit and original amendments to a letter of credit are provided to the Commission;
6. The initial letter of credit is valid for a period of one year from the effective date;
7. The issuing bank does not have an affiliate relationship with the Self-Insurer;
8. The letter of credit includes a provision that the letter of credit automatically extends for consecutive periods of one year, unless the issuing bank provides written notice to the Commission 60 days before the expiration of any one-year term that the issuing bank will not renew the letter of credit for the additional period;
9. The letter of credit states the amount available under the letter of credit, which shall be no less than the amount the Self-Insurer is required to post as security under this Article; and
10. The letter of credit includes a statement that the Commission may make a demand on the letter of credit by providing the issuing bank a signed statement by an official of the Commission stating either that the Self-Insurer has failed to comply with its workers’ compensation obligations or failed to renew or substitute acceptable security for its workers’ compensation liability 30 days before the expiration of the letter of credit.

B. The written notice required in subsection A(8) shall be sent to the Division via e-mail or by mail with delivery confirmation.

R20-5-1523. Local Government Investment Pool Funds

A Public Entity or Public Entity Pool may post Local Government Investment Pool funds as security if:

1. The Public Entity or Public Entity Pool completes a Statutory Deposit Agreement Form, which is signed by an authorized representative of the Self-Insurer, the Arizona State Treasurer, and the Commission; and
2. The funds deposited with the Arizona State Treasurer are no less than the amount the Self-Insurer is required to post as security under this Article.

R20-5-1524. Federal Money Market Fund or Treasury Note

A Self-Insurer may post a federal money market fund or a treasury note as security if:

1. The Self-Insurer completes a Custody Agreement Form, which is signed by an authorized representative of the Self-Insurer, the custodial bank, the Arizona State Treasurer, and the Commission; and
2. The amount of the Federal money market fund or treasury note posted shall be no less than the amount the Self-Insurer is required to post as security under this Article.

R20-5-1525. Waiver from Requirement to Post Security for a Public Entity or Public Entity Pool

A. Only a Public Entity or Public Entity Pool is eligible for a waiver from posting security.

B. A Public Entity or Public Entity Pool may receive a waiver from posting security if:

1. The Public Entity has conducted business or the Public Entity Pool has operated in Arizona for a minimum of five consecutive years;
2. The Public Entity Trust Fund (for a Public Entity) or the Workers’ Compensation Pool Loss Account (for a Public Entity Pool) continually maintains a positive fund/account balance; and

3. The Public Entity Trust Fund (for a Public Entity) or the Workers' Compensation Pool Loss Account (for a Public Entity Pool) is continually funded to cover actuarial liabilities of the Self-Insurer's incurred claims in accordance with the February 1996 Governmental Accounting Standards Board Statement No. 30 (Risk Financing Omnibus, An Amendment of GASB Statement No. 10), available from the Governmental Accounting Standards Board. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of the incorporated matter is available from the Commission or may be obtained from the Governmental Accounting Standards Board at 401 Merritt 7, P.O. Box 5116, Norwalk, CT 06856-5116.
- C. The decision of the Commission to approve, deny, or revoke a request for waiver of security shall be made by a majority vote of a quorum of Commissioners present at a public meeting.
- D. If the Commission grants a waiver of security, the waiver shall be included in the Resolution of Authorization issued under R20-5-1509(F). The Division shall return any security previously posted or provided to the Commission within 30 days after the approval of a waiver of security.
- E. A Public Entity or Public Entity Pool which has been granted a waiver of security must file current financial statements and a statement of unpaid liabilities with the Division every six months, beginning six months after a waiver is granted.
- F. If the Commission denies a request for waiver of security or revokes a waiver of security, the Commission shall issue and serve written findings and an order on the Applicant no later than 30 days after the Commission denial or revocation. The findings and order may be electronically signed by the Commission.
- G. The Commission shall revoke a waiver of security if the Commission determines a Public Entity or Public Entity Pool no longer satisfies the criteria in subsection B or does not comply with subsection E and the Public Entity or Public Entity Pool does not cure the deficiency within 30 days of being notified by the Division. Within ten days of service of a written findings and order revoking a waiver of security, a Public Entity or Public Entity Pool must file with the Commission a completed Workers' Compensation Liability Form and post security as required by the Commission.

R20-5-1526. Excess Insurance

- A. A Self-Insurer may secure specific and aggregate excess insurance if all of the following are satisfied:
1. The insurance carrier issuing excess insurance is authorized to transact the business of excess insurance in Arizona by the Department of Insurance and Financial Institutions;
 2. The retention for specific excess insurance is not less than \$100,000 without advance written approval by the Commission;
 3. Payments of workers' compensation benefits on a claim made by a Self-Insurer, member, or through security posted by a Self-Insurer are applied toward reaching the retention level in the excess insurance policy;
 4. The excess insurance carrier does not have an affiliate relationship with the Self-Insurer; and
 5. The excess insurance policy provides that insolvency of the Self-Insurer does not relieve the excess insurance carrier of liability under the policy.
- B. A Self-Insurer or insurance company seeking to cancel or refuse renewal of an excess insurance policy shall provide 60 days written notice of the proposed cancellation or non-renewal to the Commission. The written notice shall be sent by registered or certified mail. Failure to provide notice as required by this subsection shall preclude cancellation or non-renewal of the policy.

R20-5-1527. Self-Insurance Pool Board; Administrator

- A. A Self-Insurance Pool shall be directed by a Self-Insurance Pool Board consistent with A.R.S. §§ 11-952.01, 15-382, 23-961.01, 41-621.01, and this Article, as applicable.
- B. The Self-Insurance Pool Board of a Similar Industry Pool shall consist of five or more individuals elected for a stated term of office, at least 60% of which shall be representatives of members of the Similar Industry Pool.
- C. The duties of a Self-Insurance Pool Board shall include:
1. Responsibility for all operations of the Self-Insurance Pool;
 2. Ensuring compliance with the Act and this Article;
 3. Hiring an Administrator to manage the daily operations of the Self-Insurance Pool;
 4. Reviewing and acting on applications for membership in the Self-Insurance Pool;
 5. Contracting with a Third-Party Administrator, unless the Division has authorized the Self-Insurance Pool to Self-Administer;

6. Ensuring the Self-Insurance Pool complies with statutory accounting principles (SAP) and provides accurate financial information to enable complete and accurate preparation of financial reports;
 7. Maintaining all records and documents relating to the formation and ongoing operations of the Self-Insurance Pool;
 8. Ensuring that accurate minutes of meetings of the Self-Insurance Pool Board are completed and signed by an authorized representative of the Self-Insurance Pool;
 9. Maintaining all reports, books, records, and data relating to matters governed by this Article pursuant to R20-5-1512; and
 10. Ensuring that accounts and records of the Self-Insurance Pool are audited as required under R20-5-1513(A).
- D.** Except as prohibited by law, a Self-Insurance Pool Board may delegate duties to an Administrator. Delegation of duties to an Administrator shall be contained in a signed agreement or contract of hire between the Self-Insurance Pool Board and the Administrator.
- E.** An Administrator of a Self-Insurance Pool is subject to all of the following requirements:
1. Unless otherwise authorized by law, an Administrator for a Self-Insurance Pool shall not be a member of the Self-Insurance Pool Board.
 2. Unless otherwise authorized by law, an Administrator for a Self-Insurance Pool shall not be a member of the Self-Insurance Pool or an employee of a member of the Self-Insurance Pool.
 3. Before a Self-Insurance Pool Board can hire an Administrator, the Self-Insurance Pool shall disclose to the prospective Administrator all existing agreements between the pool and providers of services or insurance coverage and the prospective Administrator shall disclose to the Self-Insurance Pool Board any actual or perceived employment or financial interest that the Administrator or relative (as defined in A.R.S. § 38-502) of the Administrator has in the providers of services or insurance coverage.
 4. Before a Self-Insurance Pool enters into an agreement with a provider of services or insurance coverage, the Administrator shall disclose to the Self-Insurance Pool Board any actual or perceived employment or financial interest that the Administrator or a relative (as defined in A.R.S. § 38-502) of the Administrator has in the prospective provider of services or insurance coverage.
- F.** Self-Insurance Pool Boards and Administrators shall not:
1. Extend credit to members for payment of a premium;
 2. Utilize money collected as premiums for any purpose not authorized by this Article;
 3. Borrow money from the Self-Insurance Pool;
 4. Borrow money in the name and on behalf of the Self-Insurance Pool without providing prior written notice to the Division of the nature and purpose of the loan; and
 4. Admit into the Self-Insurance Pool an employer whose admission would impair the ability of the Self-Insurance Pool to process and pay benefits required under the Act.

R20-5-1528. Self-Insurance Pool Fidelity or Crime Insurance

- A.** Except as stated in subsection C, a Self-Insurance Pool shall maintain during all periods of self-insurance a fidelity or crime insurance policy that protects the pool from unlawful actions of the following:
1. Individuals appointed to the Self-Insurance Pool Board (individual and collective liability);
 2. The Administrator of the Self-Insurance Pool;
 3. Employees of the Self-Insurance Pool; and
 4. Employees of the Administrator, if applicable.
- B.** The limit of liability of the fidelity or crime insurance policy required in subsection A shall be no less than \$1 million per occurrence and shall be sufficient to protect the Self-Insurance Pool from damages resulting from unlawful acts related to of any assets controlled or managed by the Self-Insurance Pool Board, the Administrator, employees of the Self-Insurance Pool, and employees of the Administrator, if applicable.
- C.** A Self-Insurance Pool that maintains at least \$3 million in surplus funds at all times during an approved period of self-insurance is exempt from the requirements in this section.

R20-5-1529. Self-Insurance Pool Loss Control and Underwriting Programs

- A.** A Self-Insurance Pool shall maintain during all periods of self-insurance a loss control program that includes, at a minimum, written safety requirements and training programs for all employees of the

members. A Self-Insurance Pool shall ensure that the loss control program is administered by persons with education, experience, or training in loss control.

- B.** A Self-Insurance Pool shall maintain during all periods of self-insurance an underwriting program that enables the pool to establish workers' compensation premiums and to fully discharge the Self-Insurance Pool's obligation to process and pay benefits required under the Act. A Self-Insurance Pool shall ensure that the underwriting program is administered by persons with education, experience, or training in underwriting.

R20-5-1530. Self-Insurance Pool Workers' Compensation Pool Operations Account; Workers' Compensation Pool Loss Account

- A.** A Self-Insurance Pool shall maintain a Workers' Compensation Pool Operations Account, which is subject to all of the following:

1. All workers' compensation premiums charged to members of the Self-Insurance Pool shall be deposited into the Workers' Compensation Pool Operations Account, which account shall be maintained in a designated federally-insured depository.
2. A Self-Insurance Pool shall pay all operational expenses of the pool relating to workers' compensation, excluding administrative expenses associated with processing workers' compensation claims, from the Workers' Compensation Pool Operations Account.
3. Funds from the Workers' Compensation Pool Operations Account shall be transferred to the Workers' Compensation Pool Loss Account, as needed, to enable the Self-Insurance Pool to pay from the Workers' Compensation Pool Loss Account all liabilities imposed or arising under the Act and all administrative expenses associated with processing workers' compensation claims.
4. If the Workers' Compensation Pool Operations Account is co-mingled with another account, the activities of the Workers' Compensation Pool Operations Account are segregated in the financial records.

- B.** A Self-Insurance Pool shall maintain a Workers' Compensation Pool Loss Account, which is subject to all of the following:

1. A Self-Insurance Pool shall maintain its Workers' Compensation Pool Loss Account in a designated federally-insured depository.
2. A Self-Insurance Pool shall pay all workers' compensation claim expenses, including current and contingent workers' compensation claim liabilities of and administrative expenses associated with processing workers' compensation claims, from the Workers' Compensation Pool Loss Account.
3. A Self-Insurance Pool shall ensure that its Workers' Compensation Pool Loss Account is actuarially sound and able to process and pay benefits required under the Act.
4. If the Workers' Compensation Pool Loss Account is co-mingled with another account, the activities of the Workers' Compensation Pool Loss Account are segregated in the financial records.

R20-5-1531. Gross Annual Premium of a Self-Insurance Pool; Calculation of Member Premiums; Discounts; Penalties; Refunds

- A.** The gross annual workers' compensation premium for a Self-Insurance Pool shall be sufficient to fund the workers' compensation administrative expenses and total incurred workers' compensation losses of the pool.
- B.** A Self-Insurance Pool shall calculate and collect member premiums using industry best practices and formulas generally accepted in the industry.
- C.** A Self-Insurance Pool shall not discount established Payroll Classification Rates unless the discount is based upon the expense and loss experience of the Self-Insurance Pool and is supported and justified by an actuarial feasibility study.
- D.** A Self-Insurance Pool may apply a penalty rate in excess of an annual premium to any member, provided the Self-Insurance Pool serves written justification and notice on the member 30 days before the effective date of the penalty rate.
- E.** A Self-Insurance Pool may declare a refund of surplus funds, including excess investment income, to its members if the amount of the refund is supported by an actuarial report.
- F.** A Self-Insurance Pool discounting established Payroll Classification Rates under subsection C or declaring a refund of surplus funds under subsection E shall notify the Division at least 60 days before the Self-Insurance Pool discounts the Payroll Classification Rates or refunds surplus funds.

R20-5-1532. Similar Industry Pool; Joint and Several Liability of Members

- A.** The joint and several liability clause required by A.R.S. § 23-961.01(E) applies to any agreements used to form a Similar Industry Pool on a cooperative or contract basis, through a joint formation of a

nonprofit corporation, or by the execution of a trust agreement.

B. A Similar Industry Pool shall ensure that the pool and all members read and agree, in writing, to the following terms:

1. The members of the pool are jointly and severally liable for the liabilities of the pool to the extent the pool is unable to, or does not, satisfy the liabilities;
2. Member liability under subsection B(1) extends to all liabilities incurred by the pool during the member's period of membership in the pool, including all future liabilities that accrued during the member's period of membership in the pool; and
3. In the event that claims are assigned to the Special Fund under A.R.S. § 23-966, the Commission shall have a right of reimbursement against the members jointly and severally for any and all amounts paid by the Special Fund, including costs, necessary expenses, and reasonable attorney's fees, to the extent that such liabilities are not covered by the pool's security or other assets.

R20-5-1533. Completion of Reports in Support of Tax Rating Plans; Calculation and Payment of Self-Insurance Taxes

A. A Self-Insurer shall submit to the Division the information required in R20-5-1536, R20-5-1537, R20-5-1538, or R20-5-1539, as applicable, by January 31 of each year. A request for an extension may be filed with the Division in writing and shall state the reasons the Self-Insurer is unable to meet the deadline. A request for an extension shall be granted for good cause.

B. After receiving the information required in R20-5-1536, R20-5-1537, R20-5-1538, or R20-5-1539, as applicable, the Division shall determine the annual taxes owed by the Self-Insurer. The Division shall also determine whether the Self-Insurer has overpaid or underpaid its taxes for the previous calendar year. If the total of the quarterly payments is less than the actual taxes for the year, the Self-Insurer shall pay the difference on or before March 31 of the calendar year in which the taxes are due. If the total of the quarterly payments exceeds the amount of the actual taxes for the year, the Division shall refund the amount described in A.R.S. § 23-961 or § 23-1065, as applicable.

C. A Self-Insurer shall pay to the Commission the Self-Insurer's annual workers' compensation premium taxes on or before March 31 based on the net taxable premium calculated for the preceding calendar year. A Self-Insurer shall pay a premium tax of at least \$250.00 per calendar year.

D. The Division shall calculate a Self-Insurer's quarterly taxes owed under A.R.S. §§ 23-961 and 23-1065 in one of the following ways:

1. 25% of the tax calculated for the previous year; or
2. A calculation based on actual payroll and losses calculated for each quarter, using the same rating plan to calculate the quarterly payment as used to calculate the taxes required under A.R.S. §§ 23-961 and 23-1065. If the Division selects this method, the Self-Insurer shall submit quarterly payroll and loss information by Payroll Classification Code upon request.

E. Quarterly tax payments are due April 30, July 31, October 31, and January 31 for the periods ending March 31, June 30, September 30, and December 31, respectively.

F. If the Self-Insurer fails to pay the annual or quarterly taxes to the Commission when due, the Self-Insurer shall pay a penalty of \$25.00 or 5% of the tax or payment due, whichever is more, plus interest at the rate of 1% per month from the date the tax or payment was due until paid.

R20-5-1534. Premium Rates; Deviation Rates

A. Annually, by September 15, premium calculation rates and a schedule of Deviation Rates shall be calculated and approved by the Commission at a public rate hearing. The premium calculation rates and the schedule of Deviation Rates shall be effective the following calendar year.

B. The Deviation Rate applicable to a Self-Insurer relates directly to the Self-Insurer's safety record, which is measured by the Self-Insurer's Experience Modification Rating specific to Arizona for the prior year. The schedule of Deviation Rates will include the Experience Modification Rate ranges that apply to each Deviation Rate.

C. The Experience Modification Rate for purposes of determining the Deviation Rate shall be calculated as follows:

1. In the first year of self-insurance, the Experience Modification Rate is set at 1.00;
2. In the second and third years of self-insurance, the Division calculates the Experience Modification Rate based upon the payroll and loss data accumulated by the Self-Insurer during its entire term of self-insurance; and
3. In the fourth year of self-insurance and all following years, the Division calculates the Experience Modification Rate based upon the payroll and loss data of the prior three tax years.

D. If the Division cannot calculate an Experience Modification Rate in the second and all following years because the Self-Insurer does not have any injuries, the Self Insurer shall receive the highest Deviation Rate.

E. The lowest Deviation Rate included in the schedule of Deviation Rates shall not be less than 10%.

R20-5-1535. Basis for Definitions, Classifications, Rating Procedures, and Plans

The Division may use the definitions, classifications, and rating procedures specified in rating plans filed by a Rating Organization or developed by the Division to calculate the net taxable premium under A.R.S. §§ 23-961 and 23-1065.

R20-5-1536. Fixed Premium Plan; Eligibility; Formula; Necessary Information

A. Except as provided in R20-5-1539, a Self-Insurer shall use a Fixed Premium Plan for purposes of premium taxes required under A.R.S. §§ 23-961 and 23-1065 if the Self-Insurer's annual net taxable premium does not exceed \$100,000.

B. Except as provided in R20-5-1539, a Self-Insurer may elect to use a Fixed Premium Plan for purposes of premium taxes required under A.R.S. §§ 23-961 and 23-1065 if the Self-Insurer's annual net taxable premium exceeds \$100,000.

C. The Division shall calculate the net taxable premium under a Fixed Premium Plan as follows: [(payroll multiplied by the applicable Payroll Classification Rate) multiplied by (1 minus the Deviation Rate)] less premium discounts.

D. The Fixed Premium Plan applies only to operations and payroll in Arizona. The Self-Insurer shall combine all operations in Arizona to calculate the premium taxes required under A.R.S. §§ 23-961 and 23-1065.

E. A Self-Insurer shall provide the following in support of using a Fixed Premium Plan:

1. Completed Annual Payroll Report Form for the current tax year;
2. Completed Annual Medical Report Form for the current tax year;
3. Completed Annual Injury Report Forms for current and prior three tax years; and
4. Completed Quarterly Tax Payment Form.

R20-5-1537. Ex-Medical Plan; Eligibility; Formula; Necessary Information

A. Except as provided in R20-5-1539, a Self-Insurer may elect to use an Ex-Medical for purposes of premium taxes required under A.R.S. §§ 23-961 and 23-1065 if the Self-Insurer's annual net taxable premium exceeds \$100,000 and the Self-Insurer operates a medical facility with a program for providing medical, surgical, or hospital services to a majority of the employees of the Self-Insurer or the employees of the members of a Self-Insurance Pool that complies with the requirements of A.R.S. § 23-1070.

B. The Division shall calculate the net taxable premium under an Ex-Medical Plan on a Payroll Classification Code basis as follows: [(payroll multiplied by the Payroll Classification Rate) multiplied by (1 minus the Deviation Rate) multiplied by (1 minus the D-Ratio)] less premium discounts.

C. The Ex-Medical Plan applies only to operations and payroll in Arizona. The Self-Insurer shall combine all operations in Arizona to calculate the premium taxes required under A.R.S. §§ 23-961 and 23-1065.

D. A Self-Insurer shall provide the following in support of using an Ex-Medical Plan:

1. The completed forms required in R20-5-1536(E); and
2. Completed Annual Hospital Report Form for the current tax year.

R20-5-1538. Guaranteed Cost Plan; Eligibility; Formula; Necessary Information

A. Except as provided in R20-5-1539, a Self-Insurer may elect to use a Guaranteed Cost Plan for purposes of premium taxes required under A.R.S. §§ 23-961 and 23-1065 if the Self-Insurer's annual net taxable premium exceeds \$100,000.

B. The Division shall calculate the net taxable premium under a Guaranteed Cost Plan, using the most recent year's data, as follows: [(payroll multiplied by the Payroll Classification Rate) multiplied by (the Experience Modification Rate specific to Arizona) multiplied by (1 minus the Deviation Rate)] less premium discounts.

C. The Guaranteed Cost Plan applies only to operations and payroll in Arizona. The Self-Insurer shall combine all operations in Arizona to calculate the premium taxes required under A.R.S. §§ 23-961 and 23-1065.

D. The Experience Modification Rate specific to Arizona for purposes of determining the net taxable premium under a Guaranteed Cost Plan shall be calculated in the manner described in R20-5-1534(C). If the Division cannot calculate an Experience Modification Rate in the second and all

following tax years because the Self-Insurer does not have any injuries, the Experience Modification Rate shall be set at 1.00.

E. A Self-Insurer shall provide the completed forms required by R20-5-1536(E) in support of using a Guaranteed Cost Plan.

R20-5-1539. Retrospective Rating Plan; Eligibility; Formula; Necessary Information

A. The Division may require a Self-Insurer to use a Retrospective Rating Plan for purposes of premium taxes required under A.R.S. §§ 23-961 and 23-1065 if:

1. The Self-Insurer has an Experience Modification Rate specific to Arizona that exceeds 1.10 for two consecutive years; or
2. The Self-Insurer demonstrates financial instability as evidenced by declining financial ratios, an increase in leveraged debt or a net loss.

B. The Division shall calculate the net taxable premium under a Retrospective Rating Plan, using the most recent year's data, as follows: $\{[(\text{payroll multiplied by the Payroll Classification Rate}) \text{ multiplied by (the Experience Modification Rate specific to Arizona) multiplied by (1 minus the Deviation Rate)}] \text{ multiplied by the (Basic Premium Factor)}\} \text{ plus } [(\text{losses for the current year plus adjusted losses from the previous year}) \text{ multiplied by (the Loss Conversion Factor)}]$ multiplied by the tax multiplier.

C. The Retrospective Rating Plan applies only to operations and payroll in Arizona. The Self-Insurer shall combine all operations in Arizona to calculate the premium taxes required under A.R.S. §§ 23-961 and 23-1065.

D. The Experience Modification Rate specific to Arizona for purposes of determining the net taxable premium under a Guaranteed Cost Plan shall be calculated in the manner described in R20-5-1534(C). If the Division cannot calculate an Experience Modification Rate in the second and all following tax years because the Self-Insurer does not have any injuries, the Experience Modification Rate shall be set at 1.00.

E. The Division shall use assigned risk rates to calculate the premium taxes required under A.R.S. §§ 23-961 and 23-1065 for all Self-Insurers on the Retrospective Rating Plan. The assigned risk rates shall be established annually by an actuary retained by the Commission that is a member the American Academy of Actuaries (MAAA) or a fellow of the Casualty Actuarial Society (FCAS).

F. A Self-Insurer shall provide the information required by R20-5-1536(E) in support of using a Retrospective Rating Plan.

R20-5-1540. Hearing Procedure on Denied Initial Application, Denied Renewal Application, Denied New Member Application, Revocation of Authority, or Denied Application for Waiver of Security

A. A party may request a hearing under A.R.S. § 23-945 in the following circumstances:

1. Denial of an initial application, renewal application, or new member application under R20-5-1509.
2. Denial of an application to Self-Administer or revocation of authority to Self-Administer under R20-5-1510.
3. Revocation of self-insurance authorization under R20-5-1516.
4. Denial of a request for waiver of security or revocation of a waiver of security under R20-5-1525.

B. A request for hearing shall comply with A.R.S. § 23-945 and be signed by an authorized representative of the party. The party shall file the request for hearing with the Commission within 30 days from the date the Commission's written findings and order under R20-5-1509, R20-5-1510, R20-5-1516, or R20-5-1525 is served on the party. A written findings and order of the Commission under R20-5-1509, R20-5-1510, R20-5-1516, or R20-5-1525 is deemed final if a request for hearing is not received by the Chief Counsel of the Commission within the time specified in this subsection.

C. The party filing a request for hearing under subsection A(1), A(2), or A(4) has the burden of proof to establish that it has met the applicable requirements of the Act and this Article. If a party files a request for hearing under subsection A(3), the Commission has the burden of proof to establish that good cause existed for revocation of self-insurance authorization.

D. The Chair of the Commission or designee shall preside over hearings held under this section. Except as otherwise provided in this section, the Chair or designee shall apply the provisions of A.R.S. § 41-1062 to hearings held under this section and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.

E. The Chief Counsel of the Commission shall represent the Commission in hearings held under this section and, upon direction of the Chair of the Commission, shall issue on behalf of the Commission all notices and subpoenas required under this section.

- F. Except as otherwise provided by law, a party to a hearing may appear on its own behalf or through an authorized legal representative. When an authorized legal representative appears or intends to appear before the Commission, the representative shall file a notice of appearance with the Commission.
- G. For purposes of this section, a document is considered filed when the Commission receives the document. All documents required to be filed with the Commission under R20-5-1541 and this section shall be served upon the Chief Counsel of the Commission and, if applicable, upon all parties to the proceeding.
- H. The Commission shall serve written notice of hearing upon all parties at least 20 days before a scheduled hearing. The notice of hearing shall comply with the requirements in A.R.S. § 41-1061.
- I. In addition to the provisions contained in A.R.S. §§ 41-1061 and 41-1062, the following provisions apply to all hearings conducted under this section:
1. A party may make an opening and closing statement with the permission of the Chair of the Commission or designee if the Chair or designee determines that the statement will be helpful to a determination of the issues.
 2. All witnesses at a hearing shall testify under oath or affirmation.
 3. The Chair or designee may admit documents into evidence if filed no later than 15 days before the date of the hearing. Upon request or upon direction from the Chair or designee, the Commission may issue a subpoena to the author of any document submitted into evidence to appear and testify at the hearing.
 4. Upon written request by a party or upon direction from the Chair or designee, the Commission may issue a subpoena requiring the attendance and testimony of a witness. A party shall submit its subpoena request no later than ten days before the date of the hearing.
 5. Upon written request by a party or upon direction from the Chair or designee, the Commission may issue a subpoena duces tecum requiring the production of documents or other tangible evidence. The written request by a party shall contain a statement explaining the general relevance, materiality, and reasonable particularity of the documentary or other tangible evidence and the facts to be proved by them.
- J. The Commission shall make a record of all hearings under this section. Any party desiring a copy of record may request a copy from the Commission.
- K. Upon the completion of a hearing, the Commission shall issue a decision upon hearing either affirming, modifying, or reversing the original decision. The decision of the Commission shall be made by a majority vote of the quorum of Commission members present at a public meeting. The decision upon hearing shall comply with the provisions of A.R.S. § 41-1063.
- R20-5-1541. Request for Review of Decision Upon Hearing**
- A. A party may request review of a Commission decision upon hearing issued under R20-5-1540 by filing with the Commission a written request for review no later than 15 days after the decision upon hearing is served upon the parties. A decision upon hearing under R20-5-1540 is deemed final if a request for hearing is not received by the Commission within the time specified in this subsection.
- B. A request for review of a Commission decision upon hearing must be based upon one or more of the following grounds materially affecting the rights of the requesting party:
1. Irregularities in the hearing proceedings or any order or abuse of discretion that deprives a party seeking review of a fair hearing;
 2. Misconduct of the prevailing party;
 3. Accident or surprise, which could not have been prevented;
 4. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
 5. Error in the admission or rejection of evidence, or errors of law occurring at, or during the hearing;
 5. Bias or prejudice of the Division or Commission; or
 6. The decision upon hearing is not justified by the evidence or is contrary to law.
- C. The request for review shall state the specific facts and law in support of the request and shall specify the relief sought.
- D. Upon the completion of a review, the Commission shall issue a decision upon review either affirming, modifying, or reversing the decision upon hearing no later than 30 days after receiving a request for review. The decision of the Commission shall be made by a majority vote of the quorum of Commission members present at a public meeting. The decision upon hearing shall comply with the provisions of A.R.S. § 41-1063.

E. The Commission's decision upon review is final unless a party seeks judicial review as provided in A.R.S. § 23-946.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 15. WORKERS' COMPENSATION SELF-INSURANCE

1. Identification of the proposed rulemaking:

The proposed rulemaking will repeal the rules in Articles 2, 7, and 11 and adopt new Article 15, which will apply to all self-insured employers and pools. The proposed rulemaking eliminates unnecessary and burdensome regulations, eliminates overlap and inconsistencies, modernizes outdated provisions, and adds needed clarity for self-insureds and prospective self-insureds. Additionally, Article 15 offers a streamlined application and approval process that includes greater due process rights for stakeholders if the Commission were to issue an adverse determination to a self-insured or prospective self-insured.

The Commission's overarching objectives regarding Article 15, in no particular order with respect to priority, are to: (1) establish a uniform, streamlined procedural framework for the regulated community and the Commission's Administration Division to authorize self-insurance for all types of self-insured entities and pools; (2) reduce the regulatory burden imposed on self-insured employers and pools to the extent possible under controlling law; and (3) further the objectives of A.R.S. §§ 11-952.01, 15-382 23-961, 23-961.01, and 41-621.01, which include safeguarding the solvency of self-insurance programs, guaranteeing that injured workers received workers' compensation benefits, and facilitation of competition, loss control, and an employer-tailored safety programs.

0. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking:

Arizona employers and pools that meet the requirements to self-insure, under A.R.S. §§ 23-961(A), 23-961.01(A), 11-952.01, 15-382, 41-621.01 will directly benefit by the new Article.

0. 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:

The Commission does not anticipate an increase in costs from the new rulemaking. The Commission will not need to hire additional staff to enforce the new rules.

b. Costs and benefits to political subdivisions directly affected by the rulemaking:

Municipal employer pools will have the ability to save costs associated with acquiring and maintaining a statutory deposit in addition to maintaining the appropriate and acquired level of funding for its loss fund, which ultimately results in the municipal employer pool holding double the amount of the lifetime claim expense.

A crime insurance policy inclusion in lieu of fidelity insurance policy allows the self-insurance pool to utilize the crime section of its general insurance policy to cover the bonding of its members and administrators, while not adding the additional financial cost of purchasing a separate fidelity policy.

Municipal employer pools in existence for a year may admit new members without Commission approval, allowing them to streamline entrance into the pool, resulting in a larger more financially stable pool.

c. Costs and benefits to businesses directly affected by the rulemaking:

The Commission calculating rates that represent actual employment and loss trends for those employers and pools that are part of the self-insurance program will result in predictable outcomes allowing the Commission to develop accurate cash flow projections which will be used to set a feasible tax rate and incentivize safety in the workforce.

0. Impact on private and public employment in businesses, agencies and political subdivisions:

Because Article 15 does not place new obligations, costs, or time constraints on employers; adoption of the final rules is not expected to impact private and public employment in Arizona.

0. Impact on small businesses:

a. Identification of the small businesses subject to the rulemaking:

self-Arizona small businesses employers and pools that meet the requirements to insure, under A.R.S. §§ 23-961(A), and 23-961.01(A).

b. Administrative and other costs required for compliance with the rulemaking:

Article 15 does not place new obligations, costs, or time constraints on employers, adoption of the final rules is not expected to impose administrative or other costs required for compliance in Arizona.

c. Description of the methods that may be used to reduce the impact on small businesses:

The Commission did not consider methods of reducing the impact on small businesses.

d. Cost and benefit to private persons and consumers who are directly affected by proposed rulemaking:

Private persons and consumers are not directly affected by this rulemaking.

0. Probable effect on state revenues:

The Commission anticipates state revenues remaining neutral.

0. Less intrusive or less costly alternative methods considered:

The Commission did not consider alternative methods.

0. Data on which the rule is based:

The Commission did not perform any studies as a basis for the rulemaking.



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 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

Authority: A.R.S. § 23-107(A)(1)

Supp. 22-2

20 A.A.C. 5, consisting of R20-5-101 through R20-5-164, R20-5-201 through R20-5-224, R20-5-301 through R20-5-318, R20-5-401 through R20-5-428, R20-5-501 through R20-5-512, R20-5-601 through R20-5-682, R20-5-801 through R20-5-829, R20-5-901 through R20-5-914, and R20-5-1001 through R20-5-1007 recodified from 4 A.A.C. 13, consisting of R4-13-101 through R4-13-164, R4-13-201 through R4-13-224, R4-13-301 through R4-13-318, R4-13-401 through R4-13-428, R4-13-501 through R4-13-512, R4-13-601 through R4-13-682, R4-13-801 through R4-13-829, R4-13-901 through R4-13-914, and R4-13-1001 through R4-13-1007, pursuant to R1-1-102 (Supp. 95-1).

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Article 2, consisting of Sections R4-13-201 through R4-13-222, adopted effective July 6, 1993 (Supp. 93-3).

Article 2, consisting of Sections R4-13-201 through R4-13-224, repealed effective July 6, 1993 (Supp. 93-3).

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R20-5-701 through R20-5-708 recodified from R4-13-701 through R4-13-708 (Supp. 95-1).

Article 7, consisting of Sections R4-13-701 through R4-13-708, transferred to the Department of Agriculture, Title 3, Chapter 8, Article 7, Sections R3-8-201 through R3-8-208, pursuant to Laws 1990, Ch. 374, Sec. 445 (Supp. 91-3).

New Article 7 adopted effective July 13, 1989. (Supp. 89-3)

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Former Article 9 consisting of Sections R4-13-901 through R4-13-906 repealed effective May 27, 1977. R20-5-901 through R20-5-914 recodified from R4-13-901 through R4-13-914 (Supp. 95-1).

Article 9 consisting of Sections R4-13-901 through R4-13-914 adopted effective May 27, 1977.

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Appendix A, Arizona Physicians' and Pharmaceutical Fee Schedule repealed; new Appendix A, Arizona Physicians' and Pharmaceutical Fee Schedule made by exempt rulemaking at 26 A.A.R. 2119, effective October 1, 2020 (Supp. 20-3).

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Emergency expired. Amended and readopted as an emergency effective July 11, 1989 (Supp. 89-3). Adopted as a permanent rule effective October 4, 1989 (Supp. 89-4).

R20-5-163 recodified from R4-13-163 (Supp. 95-1).

Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-164. Human Immunodeficiency Virus, Hepatitis C, Methicillin-resistant *Staphylococcus Aureus*, Spinal Meningitis and Tuberculosis; Significant Exposure; Employee Notification; Reporting; Documentation; Forms

- A.** An employer subject to the Act shall notify its employees of the requirements of A.R.S. §§ 23-1043.02, 23-1043.03, and 23-1043.04 by posting the Commission notices titled “Work Exposure to Bodily Fluids” and “Work Exposure to methicillin-resistant *Staphylococcus Aureus* (MRSA), Spinal Meningitis, or Tuberculosis (TB)” in a conspicuous place immediately next to the “Notice to Employees” notice required under A.R.S. § 23-906(D).
- B.** Properly posted “Work Exposure to Bodily Fluids” and “Work Exposure to Methicillin-resistant *Staphylococcus Aureus* (MRSA), Spinal Meningitis, or Tuberculosis (TB)” notices constitute sufficient notice to employees of the requirements of a prima facie case under A.R.S. §§ 1043.02(B), 23-1043.03(B), and 23-1043.04(B).
- C.** An employer’s insurance carrier, claims processor, or workers’ compensation pool shall provide the notices specified in subsection (A) to the employer. These notices are also available from the Commission upon request.
- D.** An employer shall make readily available to its employees the Commission form described in R20-5-106 titled “Report of Significant Work Exposure to Bodily Fluids or Other Infectious Material.” An employer’s insurance carrier, claims processor, or workers’ compensation pool shall provide the “Report of Significant Work Exposure to Bodily Fluids or Other Infectious Material” to the employer. This form is also available from the Commission upon request.
- E.** If an employee sustains a significant exposure as defined in A.R.S. §§ 23-1043.02(G), 23-1043.03(G), or 23-1043.04(H)(2), the employee shall complete, date, and sign a “Report of Significant Work Exposure to Bodily Fluids or Other Infectious Material” form. The employee or employee’s authorized representative shall give to the employer the completed, dated, and signed form. The employer shall return one copy of the completed form to the employee or to the employee’s authorized representative. Nothing in this subsection limits the requirements to report an injury or file a claim under the Act.
- F.** If an employee submits a written report of a significant exposure to an employer, but does not use the Commission form titled “Report of Significant Work Exposure to Bodily Fluids or Other Infectious Material,” the employer shall provide the employee the Commission form within five calendar days after receiving the employee’s initial written report.
- G.** The date of the receipt by the employer or its authorized representative of the employee’s initial report is the date used to compute the time period prescribed in A.R.S. §§ 23-1043.02(B)(2), 23-1043.03(B)(2), and 23-1043.04(B)(2) if:
1. The initial report contains the information required in the “Report of Significant Work Exposure to Bodily Fluids or Other Infectious Material” form, or
 2. The employee gives to the employer the completed Commission form within 10 calendar days after the employee’s receipt of the Commission form.
- H.** Failure or refusal by the employer to provide the Commission form to the employee shall not be a defense to a prima facie

claim under A.R.S. §§ 23-1043.02(B), 23-1043.03(B), and 23-1043.04(B).

- I.** In investigating the circumstances and facts surrounding an employee’s report to an employer of a significant exposure under A.R.S. §§ 23-1043.02(C), 23-1043.03(C), and 23-1043.04(C), the employer, or its carrier, or any employees, agents or contractors of either the employer or carrier, shall not disclose to any person, except as authorized or required by law, that the reporting employee, or any witness or alleged source of exposure, may have or did contract the human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, methicillin-resistant *Staphylococcus aureus*, spinal meningitis, or tuberculosis. However, an employer, its carrier or their respective attorneys, may:
1. Direct an agent to investigate the employee’s report of significant exposure, and
 2. Communicate with the investigating agent about the conduct and results of the investigation.
- J.** As required under the federal Occupational Safety and Health Standard for Bloodborne Pathogens, 29 CFR 1910.1030, an employer shall pay for the testing required by A.R.S. § 23-1043.02.

Historical Note

Adopted effective April 9, 1992 (Supp. 92-2). R20-5-163 recodified from R4-13-163 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3). Amended by final rulemaking at 15 A.A.R. 991, effective June 2, 2009 (Supp. 09-2).

R20-5-165. Calculation of Maximum Average Monthly Wage
In using the Bureau of Labor Statistics Employment Cost Index to adopt the amount of an increase to the maximum average monthly wage under A.R.S. § 23-1041(E), the Commission shall use the *Bureau of Labor Statistics, Employment Cost Index for Wages and Salaries, for Civilian Workers, by Occupational Group and Industry, All Workers*, available at <http://www.bls.gov/>.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1925, effective July 10, 2013 (Supp. 13-3).

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

R20-5-201. Definition of Self-insurer

“Self-insurer” or “self-insured” means an individual employer or a workers’ compensation pool as defined in A.R.S. §§ 11-952.01(B) or 41-621.01(A) that is authorized by the Commission to self-insure for workers’ compensation.

Historical Note

Former Rule I. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-201 recodified from R4-13-201 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4).

R20-5-202. Self-insurance Application; Requirements

- A.** All applicants who initially apply for self-insurance on or after the certification of the 1993 rule amendments by the Attorney General and filing of those amendments with the Secretary of State shall:
1. Complete, date, sign, and file with the Commission an application for authority to self-insure on a form that can be obtained from the Commission and contains the following information:

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- a. Applicant identification including names, addresses, corporation, subsidiary, and partnership information;
 - b. Nature of business;
 - c. History of business in Arizona and elsewhere;
 - d. Payroll data;
 - e. Work force data;
 - f. Insurance data;
 - g. Claims history;
 - h. Method proposed to finance self-insurance liability and reserves;
 - i. Program for compliance with occupational safety and health standards, rules, and laws of this state;
 - j. Program to finance medical, surgical, and hospital benefits including information on organization responsible for processing claims;
 - k. Names and addresses of Arizona agents upon whom legal notice of proceedings before the Commission is served;
 - l. Authorization for signator;
 - m. Authorization by corporate resolution, or board of trustees resolution, if applicable; and
 - n. Statement attesting to the truthfulness of the information in the application.
2. Maintain an office in Arizona. Payroll reports and other materials relating to the calculation of premiums shall be readily available at this office for inspection and audit by the Commission or its authorized representative.
 3. In the first year of operation, obtain a guaranty bond and specific excess insurance or excess of loss insurance in an amount as provided in R20-5-206(D)(1) to adequately protect against catastrophic losses. Starting with the second year of operation, an individual self-insurer shall choose one of the two options provided in R20-5-206(D). The insurance shall contain:
 - a. A 60-day notice of termination; and
 - b. A provision that insolvency of the self-insurer does not relieve the excess insurer of liability assumed under the contract.
- B.** An individual applicant for self-insurance that is not a member of a workers' compensation pool, in addition to complying with subsection (A) of this rule, shall:
1. Have been engaged in business in Arizona for at least five years prior to the date of application.
 2. Provide an annual payroll in this state of at least \$2,000,000 (this payroll may include the combined payrolls of all subsidiary companies carried under the self-insurance authorization; the requirements of this subsection do not apply to political subdivisions of this state) and meet either of the following thresholds:
 - a. Total reported assets of at least \$50,000,000; or
 - b. Combination of \$10,000,000 in net worth and a cash flow ratio of .25.
 3. Provide the Commission with an internally certified copy of the employer's audited or reviewed financial statements for the most current and prior two years. The Commission's review of the applicant's financial statements includes the following:
 - a. Calculation of the following ratios:
 - i. Cash Flow Ratio - Cash flow from operations divided by current liabilities which is an indication of the ability of the applicant to meet current obligations out of cash flow.
 - ii. Current Ratio - Current assets divided by current liabilities which indicate the applicant's ability to service current obligations.
 - iii. Debt Status Ratio - Net worth divided by total liabilities which indicate the proportion of funds supplied by the applicant relative to the funds supplied by creditors.
 - iv. Profitability Ratio - Profit before taxes, divided by total assets, multiplied by 100 which measures the return on assets and the efficiency of assets employed by the firm.
 - v. Quick Ratio - Cash and equivalents, plus trade receivables, divided by current liabilities which express the degree to which the applicant's liabilities are covered by the most liquid current assets.
 - vi. Working Capital Ratio - Working capital divided by sales which measures the sufficiency of working capital to support sales.
- b. Comparison of the applicant's ratios with the ratios of existing self-insurers in the same or a closely related industry.
 - c. Review of notes to the financial statement.
 - d. Review of management report of operation and other information published in the annual statement.
4. Provide the Commission with the names of all other jurisdictions in which it has been granted authority to self-insure and the effective dates of such authorization.
 5. Provide the Commission with the names of all other jurisdictions in which its application to self-insure has been denied or its authority to self-insure has been suspended or revoked, and the dates and reasons for such denials, suspensions, or revocations.
- C.** In addition to the requirements of subsection (A), a workers' compensation pool applicant for self-insurance shall:
1. File with the application for self-insurance a completed indemnity agreement on a form that can be obtained from the Commission, signed by a duly authorized agent of the pool jointly and severally binding the pool and each of its members to comply with the provisions of A.R.S. Title 23, Chapter 6 and rules adopted pursuant to Chapter 6. The indemnity agreement shall contain the following information:
 - a. Name of the group, with names of trustees and members;
 - b. Amount of the corporate surety bond;
 - c. Name of the service agent of the group, including a description of the agent's duties and responsibilities; and
 - d. Statement that the group will defend and assume liabilities in the name of and on behalf of any member of the group.
 2. Provide a copy of the most recently audited financial report of the pool prepared by a certified public accountant, including a copy of the examination report prepared by the Department of Insurance and that Department's recommendations, if any.
 3. Provide the names and addresses of the members of the board of trustees of the pool.
 4. Provide the agreement indicating the terms and conditions of coverage within the pool including any exclusions of coverage.
 5. An intergovernmental agreement filed with the Commission pursuant to A.R.S. § 11-952.01(G)(7) shall contain the provisions of A.R.S. § 11-952.01(I).

Historical Note

Former Rule II. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-202 recodified from R4-13-202 (Supp. 95-1).

R20-5-203. Self-insurance Renewal Application; Requirements

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A. All individual applicants for self-insurance renewal authority shall:

1. Complete, date, sign, and file with the Commission an Option Election form that can be obtained from the Commission when providing a bond or other security as required by R20-5-206(D) for the payment of workers' compensation liabilities. The Option Election form shall list the following:
 - a. Total outstanding workers' compensation accrued liabilities for all previous periods of self-insurance;
 - b. Amount of future reserves;
 - c. Amount of calculated bond based on the amount of total estimated future liability x 125%.

For those self-insurers complying with R20-5-206(D)(1), the self-insurer shall additionally provide a certificate of excess insurance.
2. Provide a continuation certificate for the guaranty bond or letter of credit signed by an authorized representative of the surety or bank. The amount of the bond, letter of credit, or securities shall equal the amount submitted on the Option Election form.
3. Submit a copy of the most recent certified annual financial statement at least 30 days prior to the anniversary date of the authorization to self-insure. A parent company that has executed a guaranty for a subsidiary shall also submit a copy of its most recent certified annual financial statement within the same time period required by this subsection.
4. Provide a Guaranty To Satisfy Compensation Claims Under Workers' Compensation Act in Arizona form as provided in R20-5-206(C) completed, signed, and dated by the parent company of a subsidiary self-insurer if the parent company of the self-insurer is different from the last filing approved by the Commission.

B. All workers' compensation pool applicants for self-insurance renewal authority shall:

1. Provide information to the Commission as required under subsections (A)(1), (2), and (3).
2. Provide an updated indemnity agreement pursuant to R20-5-202(C)(2) for changes occurring since the last filing approved by the Commission.

C. All applicants for renewal shall continue to maintain an office in Arizona as described in R20-5-202(A)(2).

D. The Commission's analysis for renewal includes the following:

1. A review of the items required by R20-5-202(A).
2. A review of the claims profile which includes a review of the preceding year's claims filed, claims denied, and denial rate. Denial rates in excess of 8% require additional analysis by the Commission's Claims Division to establish the reasons for the denials.
3. A review of the self-insurer's financial profile which includes a review of the financial data as described in R20-5-202(B)(3).

Historical Note

Former Rule III. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-203 recodified from R4-13-203 (Supp. 95-1).

R20-5-204. Denial of Authorization to Self-insure

If the Commission denies an application for authorization to self-insure for failure to comply with A.R.S. § 23-961(A)(2) or for failure to comply with the requirements of R20-5-202 or R20-5-203, the Commission shall issue an Order to the applicant refusing authorization to self-insure. An appeal of such denial may be made pursuant to A.R.S. § 23-945.

Historical Note

Former Rule IV. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-204 recodified from R4-13-204 (Supp. 95-1).

R20-5-205. Resolution of Authorization

If the Commission grants authorization to self-insure, a Resolution of Authorization to Self-insure will be issued. The issuance of the Resolution shall be conditioned upon the deposit with the Commission, prior to the effective date stated in the Resolution, of the bonds or other securities specified by A.R.S. § 23-961(A)(2) and this Article.

Historical Note

Former Rule V. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-205 recodified from R4-13-205 (Supp. 95-1).

R20-5-206. Posting of Guaranty Bond; Effective Date; Execution; Subsidiary Company Guaranty Bond; Parent Company Guaranty; Bond Amounts

- A. Any guaranty bond filed with the Commission shall bear the same effective date as the effective date of the Resolution of Authorization to Self-insure and shall be for a minimum of one year, subject to annual renewal.
- B. A guaranty bond shall be made by a company authorized and licensed to transact the business of fidelity and surety insurance in Arizona. The guaranty bond shall be executed by a duly authorized agent of the surety and be countersigned by a licensed resident agent. A bond form can be obtained from the Commission and contains the following information:
 1. Applicant identification;
 2. Amount of the bond;
 3. Conditions of the bond obligations; and
 4. Statement regarding responsibility for fees and costs associated with collection of the bond and responsibility for payment of any award or judgment against the surety.
- C. For the Commission to issue a Resolution of Authorization to Self-insure to a subsidiary company, the parent company shall first execute a guaranty for the subsidiary on a form that can be obtained from the Commission. The parent company shall submit its most recent audited financial statement to the Commission for analysis to determine the ability of the parent company to meet its obligations under the guaranty and under A.R.S. § 23-961(A)(2). The guaranty shall state that the parent company agrees and guarantees on behalf of the subsidiary that any and all liabilities against the subsidiary, under or by virtue of the Workers' Compensation Laws of Arizona, shall be promptly and fully paid, and the subsidiary company has on deposit a guaranty bond or securities. The guaranty for a subsidiary company, and the Resolution of Authorization to Self-insure issued to such subsidiary company, shall be valid and effective only as long as the parent company has on file with the Commission a valid guaranty to satisfy compensation claims of the subsidiary. A parent company is one which owns sufficient stock in the subsidiary company to control the subsidiary and does not mean a company in which all or a majority of the stockholders are the same as in the subsidiary. The guaranty shall be accompanied by a verified certificate as to stock ownership of the subsidiary, a certified copy of the charter or articles of incorporation of the parent company and a certified copy of the resolution of the directors of the parent company authorizing a designated officer to execute the guaranty.
- D. In compliance with this Article and the Workers' Compensation Laws of Arizona, an individual self-insurer that is not a member of a workers' compensation pool shall post either:
 1. A minimum \$250,000 guaranty bond and a specific

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excess reinsurance policy with a self-insured retention of \$250,000 and a policy limit of liability of not less than \$10,000,000.

2. A guaranty bond equal to 125% of the total outstanding accrued liability as reflected in the Option Election form from the self-insurer to the Commission or a minimum guaranty bond in the amount of \$100,000, whichever is greater. The total outstanding accrued liabilities shall be determined by certification from the self-insurer for the Commission's approval.
- E. In compliance with this Article and the Workers' Compensation Laws of Arizona, a workers' compensation pool shall post a guaranty bond equal to 125% of the total outstanding accrued liability as reflected in the Option Election form from the self-insured pool to the Commission or a minimum guaranty bond in the amount of \$100,000, whichever is greater. The total outstanding accrued liabilities shall be determined by certification from the self-insured pool for the Commission's approval.

Historical Note

Former Rule VI; Amended effective February 27, 1975 (Supp. 75-1). Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-206 recodified from R4-13-206 (Supp. 95-1).

R20-5-207. Posting of Securities in Lieu of Guaranty Bond; Registration; Deposit

- A. In lieu of posting a guaranty bond as provided in R20-5-206, the self-insurer may deposit with the Commission for transmittal to the State Treasurer bonds of the United States.
- B. Any securities deposited with the State Treasurer shall be registered to: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws. The securities shall be held by the State Treasurer, as custodian subject to the order of, and in trust for, The Industrial Commission of Arizona, with the power in the Commission to collect or order collection of the principal as it becomes due, to sell or order the sale of these securities or any part of these securities, and to apply or order the application of the proceeds to the payment of any award rendered against the self-insurer in the event of the default in the payment of its obligations. The interest coupons on such securities shall be remitted by the Commission to the self-insurer upon request as they mature.
- C. The securities deposited in compliance with subsections (A) and (B) shall have a face value at maturity in the amount specified by the Commission.

Historical Note

Former Rule VII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-207 recodified from R4-13-207 (Supp. 95-1).

R20-5-208. Posting Other Securities

If the Commission accepts securities other than those specified in R20-5-207, including letters of credit, these securities shall be registered in the same manner as provided in R20-5-207.

Historical Note

Former Rule VIII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-208 recodified from R4-13-208 (Supp. 95-1).

R20-5-209. Authorization Limitation

If the Resolution of Authorization to Self-insure is validated by a deposit of acceptable securities, or by a guaranty bond, the resolution shall remain in full force and effect for a period of one year unless revoked by the Commission.

Historical Note

Former Rule IX. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-209 recodified from R4-13-209 (Supp. 95-1).

R20-5-210. Continuation of Authorization

If timely and sufficient application for renewal is made pursuant to R20-5-203, the existing authorization to self-insure shall continue, subject to compliance with A.R.S. Title 23, Chapter 6 and this Article, until the renewal application has been finally determined by the Commission.

Historical Note

Former Rule X. R20-5-210 recodified from R4-13-210 (Supp. 95-1).

R20-5-211. Revocation of Authorization; Notice of Insolvency; Notice of Change of Ownership

- A. The Commission may revoke a resolution of authorization to self-insure for good cause. Good cause includes:
 1. The impairment of the solvency of the self-insurer.
 2. The failure of the self-insurer to respond within 10 days of a demand by the Commission to substitute a satisfactory guaranty bond or securities when in the Commission's judgment the bond or securities on deposit are unsatisfactory or insufficient in amount or character.
 3. The failure of the self-insurer to pay tax assessments levied by the Commission within 30 days of the due dates prescribed by A.R.S. §§ 23-961 and 23-1065.
 4. The failure of the self-insurer to promptly provide the Commission within 60 days the reports required by the Commission under this Article concerning the business, operations, employees, wages, injuries, and other subjects under Commission jurisdiction.
 5. The failure to comply with state workers' compensation laws.
 6. The failure of the self-insurer to pay or comply with any award of the Commission within 30 days after the award becomes final.
 7. The willful misstating of any material fact in a payroll report, injury report, or other report or statement made to the Commission.
 8. The deliberate refusal of the self-insurer to comply with Commission rules.
 9. The failure of the workers' compensation pool to notify the Commission within 30 days before termination or cancellation that a member has been terminated or cancelled.
 10. The failure of the workers' compensation pool to notify the Commission within 30 days of receipt of notification that, as a result of the annual audit or examination by the Director of the Department of Insurance, it appears that the assets of the pool are insufficient to enable the pool to discharge its legal liabilities and other obligations and the resulting notification by the Director of the Department of Insurance to the administrator and board of trustees of the workers' compensation pool of the insufficiency and the Director's list of recommendations to abate the deficiency.
 11. The failure of the pool to comply with the recommendation of the Director of the Department of Insurance within 60 days of the date of notice as prescribed in A.R.S. §§ 11-952.01(L) and 41-621.01(J).
- B. The self-insurer shall notify the Commission within 24 hours of any bankruptcy filing under federal law or insolvency proceeding under any state's laws.
- C. The self-insurer shall notify the Commission within 24 hours of any change in the ownership status of the employer.

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Historical Note

Former Rule XI. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-211 recodified from R4-13-211 (Supp. 95-1).

R20-5-212. Notice of Revocation of Resolution of Authorization to Self-insure

The registration and deposit in the United States mail of a Notice of Revocation of the Resolution of Authorization to Self-insure, addressed to the last known address of the employer as shown by the records of the Commission, and signed by the Commission, shall be deemed to constitute actual delivery of such notice to a self-insurer.

Historical Note

Former Rule XII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-212 recodified from R4-13-212 (Supp. 95-1).

R20-5-213. Substitution of Bond or Securities

No bond or other security deposited as a condition precedent to validating a Resolution of Authorization to Self-insure shall be returned nor shall any substitution be allowed, except upon written order of the Commission. No return of such bond or other security shall be authorized except upon proof that the employer has placed with the Commission an amount or amounts as determined by the Commission to be sufficient to provide for the present value of all death benefits, awards, and determinations previously made by the Commission or the self-insurer, with an adequate contingency amount to apply to reopened claims that have been closed and become final during the period of self-insurance.

Historical Note

Former Rule XIII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-213 recodified from R4-13-213 (Supp. 95-1).

R20-5-214. Rating Plans Available for Self-insurers

- A.** Any of the following rating plans are available to self-insured employers for the purpose of calculating the taxes required by A.R.S. §§ 23-961(G) and 23-1065(A).
1. Fixed Premium Plan
 2. Ex-medical Plan
 3. Guaranteed Cost Plan
 4. Retrospective Rating Plan
- B.** The provisions of the rating plans apply only to operations and payroll in Arizona, and all such operations in Arizona shall be combined as a single base for the calculation of any premium modifications to all such operations.

Historical Note

Former Rule XIV. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-214 recodified from R4-13-214 (Supp. 95-1).

R20-5-215. Fixed Premium Plan: Definition; Formula; Eligibility

- A.** A Fixed Premium Plan means a plan in which neither losses nor incurred loss reserves are used for calculation. The only discount is for premium size.
- B.** The formula for calculation of the fixed premium plan is as follows: $\text{Payroll} \times \text{Applicable Rate} \text{ Less Premium Discount}$.
- C.** Fixed Premium Plan shall be the exclusive plan available to:
1. Those self-insurers electing this plan.
 2. Those self-insurers whose annual net taxable premium does not exceed \$100,000 annually.
 3. Those self-insurers not eligible for any other plan authorized by the Commission for rating purposes.

Historical Note

Former Rule XV. Section repealed, new Section adopted

effective July 6, 1993 (Supp. 93-3). R20-5-215 recodified from R4-13-215 (Supp. 95-1).

R20-5-216. Ex-medical Plan: Definition; Formula; Eligibility; Modification

- A.** An Ex-Medical Plan means a plan for premium calculation which provides for rate revisions based upon the self-insurer operating a medical facility with a program for providing medical, surgical, or hospital services to all of the self-insurer's employees for their benefit and that has complied with the requirements specified in A.R.S. § 23-1070. Neither losses nor incurred loss reserves are used in such plan.
- B.** The formula for calculation of the Ex-Medical Plan is as follows: $[(\text{Payroll} \times \text{Applicable Rate}) \times (1 - \text{Ex-Medical Factor})] \text{ less Premium Discount}$.
- C.** Only those self-insurers whose program for medical, surgical, or hospital services has been authorized by the Commission are eligible to utilize this plan, for premium calculation.
- D.** To be eligible for this plan the self-insurer's annual net taxable premium must exceed \$100,000.

Historical Note

Former Rule XVI. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-216 recodified from R4-13-216 (Supp. 95-1).

R20-5-217. Guaranteed Cost Plan: Definition; Formula; Eligibility; Cost of Calculation

- A.** A Guaranteed Cost Plan means a plan providing for the direct relationship, on an annual basis, of the premium for tax purposes and the experience modification developed to reflect the loss payment and incurred loss experience of the self-insured employer. Loss data for three complete years must be provided to calculate the experience modification factor. This plan shall be calculated annually and the premium shall not be subject to further adjustment during the subsequent year.
- B.** The formula for the calculation of the Guaranteed Cost Plan is as follows: $\text{Payroll} \times \text{Applicable Rate} \times \text{Experience Modification Factor} \text{ Less Premium Discount}$.
- C.** Only those self-insurers who satisfy all of the following requirements shall be eligible to use the Guaranteed Cost Plan:
1. The submission of data concerning paid loss determinations and incurred loss reserves for each workers' compensation claimant. The information is used to calculate an experience modification factor for the self-insurer. Three years of loss data shall be formulated to calculate the experience modification factor.
 2. An annual net taxable premium exceeding \$100,000.

Historical Note

Former Rule XVII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-217 recodified from R4-13-217 (Supp. 95-1).

R20-5-218. Retrospective Rating Plan: Definition; Formula; Eligibility

- A.** Retrospective rating plan means a plan providing for the relationship between the premium for tax purposes, the experience modification factor developed to reflect the loss payment and incurred loss experience of the self-insured employer, and the actual incurred losses for the tax year. This plan is to be calculated annually and the premiums shall not be subject to further adjustment during the tax year.
- B.** The formula for calculating the retrospective rating plan is as follows: $[\text{Payroll} \times \text{Applicable Rate} \times \text{Experience Modification Factor} \times \text{Basic Premium Factor} + (\text{losses current year} + \text{adjusted losses previous year}) \times \text{loss conversion factor}] \times \text{Tax Multiplier} = \text{Net Taxable Premium (NTP)}$. The NTP is subject to a maximum and minimum premium level depending on

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which one of the four rating option plans specified in the rating systems filed by the rating organization used by the State Compensation Fund pursuant to A.R.S. Title 20, Chapter 2, Article 4 is used.

- C. Only those self-insurers who satisfy all of the following requirements shall be eligible to use the retrospective rating plan:
1. The submission of data concerning paid loss determinations and incurred loss reserved for each worker's compensation claimant. The information is used to calculate an experience modification factor for the self-insurer. Four years of loss data must be formulated. The oldest three years of data is used to calculate the rate and the most current year's data is used in the actual tax calculation.
 2. An annual net taxable premium exceeding \$100,000.

Historical Note

Former Rule XVIII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-218 recodified from R4-13-218 (Supp. 95-1).

R20-5-219. Payment of Taxes by Self-insurers

The tax payments described in A.R.S. §§ 23-961(G) through (J) and 23-1065(A) shall be processed in accordance with the following:

1. All self-insurers shall submit their payroll, loss, medical, and other information to the Commission by January 31 of each year.
2. All self-insurers shall pay their annual taxes on or before March 31 based on premiums calculated for the preceding calendar year. The payment for each tax shall not be less than \$250.00 per year.
3. Those self-insurers who paid \$2,000.00 or more for the administrative fund tax (A.R.S. § 23-961(G)) for the preceding calendar year shall pay a quarterly tax in the following year. One of two methods can be used to calculate the payment. The first method is a quarterly payment of 25% of the tax calculated for the previous year. The second method is based on actual payroll and premiums calculated for each quarter. Those self-insured employers who paid \$2,000.00 or more for the Special Fund tax (A.R.S. § 23-1065(A)) for the preceding calendar year must pay a quarterly tax using the same methods to calculate payment. The quarterly payments are due April 30, July 31, October 31, and January 31 for the periods ending March 31, June 30, September 30, and December 31, respectively.
4. Upon calculation of the annual taxes, it shall be determined by the Commission if the self-insured employer has overpaid or underpaid its taxes. If the total of the quarterly payments is less than the actual taxes calculated for the year, then the amount representing the difference is due on or before March 31. If the total of the quarterly payments exceeds the amount of the actual taxes calculated for the year, a refund will be paid to the self-insurer.
5. If the self-insurer fails to pay the annual or quarterly taxes when due, a penalty of the greater of \$25.00 or 5% of the tax or payment due plus interest at the rate of 1% per month from the date the tax or payment was due shall be paid by the self-insurer.

Historical Note

Former Rule XIX. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-219 recodified from R4-13-219 (Supp. 95-1).

R20-5-220. Basis; Definitions

For determining the premium for purposes of R20-5-214, the Commission shall utilize as the basis for classifications, rating proce-

dures, and plans those specified in the rating systems filed by the rating organization used by the State Compensation Fund pursuant to A.R.S. Title 20, Chapter 2, Article 4.

Historical Note

Former Rule XX. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-220 recodified from R4-13-220 (Supp. 95-1).

R20-5-221. Book and Record Review by the Commission

All reports, books, and records of the self-insurer relating to classifications, payroll, incurred loss reserves, and procedures for development of statistical information for the development of rating information are subject to review by the Commission and its authorized representatives. If, in the judgment of the Commission, reports, records, and data relating to payroll or claims are not valid or credible, the Commission reserves the right to require correction of procedure and data to better determine the information needed to evaluate the rating programs.

Historical Note

Former Rule XXI. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-221 recodified from R4-13-221 (Supp. 95-1).

R20-5-222. Audits; Cost of Audit

The Commission may, at any time upon three working days' notice, perform or have performed for its benefit an audit of the payroll, loss payment, and loss reserve records for incurred losses of the self-insurer for the purpose of determining the scope and adequacy of the maintained records. The entire cost of the audit will be borne by the self-insurer.

Historical Note

Former Rule XXII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-222 recodified from R4-13-222 (Supp. 95-1).

R20-5-223. Time-frames for Processing Initial and Renewal Applications for Authorization to Self-insure**A. Administrative completeness review.**

1. Initial application.
 - a. The Administration Division shall review an initial application for authority to self-insure within 20 days of receipt of the application to determine whether the application contains the information required by A.R.S. § 23-961 and this Article.
 - b. The Administration Division shall inform an applicant by written notice whether the application is complete within the time-frame provided in this subsection. If the application is incomplete, the Administration Division shall include in its written notice to the applicant a complete list of the missing information.
 - c. The Administration Division shall deem the application withdrawn if an applicant fails to file a complete application within 45 days of being notified by the Administration Division that the application is incomplete, unless the applicant obtains an extension to provide the missing information under subsection (D).
2. Renewal application.
 - a. The Administration Division shall review a renewal application for authority to self-insure within 20 days of receipt of the application to determine whether the application contains the information required by A.R.S. § 23-961 and this Article.
 - b. The Administration Division shall inform a self-insurer by written notice whether the application is complete within the time-frame provided in subsec-

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tion (A)(2)(a). If the application is incomplete, the Administration Division shall include in its written notice to the self-insurer a complete list of the missing information.

- c. The Administration Division shall deem the application withdrawn if a self-insurer fails to file a complete application within 45 days of being notified by the Administration Division that the application is incomplete, unless the self-insurer obtains an extension to provide the missing information under subsection (D).

B. Substantive review.

1. Initial application. Within 70 days after the Administration Division determines an initial application complete, the Commission shall determine whether an initial application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall issue an order granting or denying authority to self-insure.
2. Renewal application. Within 40 days after the Administration Division determines a renewal application complete, the Commission shall determine whether a renewal application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall issue an order granting or denying authority to self-insure.

C. Overall review.

1. Initial application. The overall review period shall be 90 days, unless extended under A.R.S. § 41-1072 et seq.
2. Renewal application. The overall review period shall be 60 days, unless extended under A.R.S. § 41-1072 et seq.

- D.** If an applicant or self-insurer cannot timely submit to the Administration Division information to complete an initial or renewal application, the applicant or self-insurer may obtain an extension to submit the missing information by filing a written request with the Administration Division no later than 40 days after receipt of the notice from the Administration Division that the initial or renewal application is incomplete. The written request for an extension shall state the reasons the applicant or self-insurer is unable to meet the 45-day deadline. If an extension will enable the applicant or self-insurer to assemble and submit the missing information, the Administration Division shall grant an extension of not more than 30 days and provide written notice of the extension to the applicant or self-insurer.

Historical Note

Former Rule XXIII. Section repealed effective July 6, 1993 (Supp. 93-3). R20-5-223 recodified from R4-13-223 (Supp. 95-1). New Section adopted October 9, 1998 (Supp. 98-4).

R20-5-224. Computation of Time

- A.** In computing any period of time prescribed or allowed by this Article, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.
- B.** Except as otherwise provided by law, the Commission may extend time limits prescribed by this Article for good cause.

Historical Note

Former Rule XXIV. Section repealed effective July 6, 1993 (Supp. 93-3). R20-5-224 recodified from R4-13-224 (Supp. 95-1). New Section adopted effective October

9, 1998 (Supp. 98-4).

ARTICLE 3. EXPIRED

R20-5-301. Expired

Historical Note

Former Rule I. R20-5-301 recodified from R4-13-301 (Supp. 95-1). Section R20-5-301 repealed; new Section R20-5-301 adopted effective September 9, 1998 (Supp. 98-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 297, effective January 3, 2017 (Supp. 17-1).

R20-5-302. Expired

Historical Note

Former Rule II; Amended effective March 9, 1981 (Supp. 81-2). R20-5-302 recodified from R4-13-302 (Supp. 95-1). Section R20-5-302 repealed; new Section R20-5-302 adopted effective September 9, 1998 (Supp. 98-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 297, effective January 3, 2017 (Supp. 17-1).

R20-5-303. Expired

Historical Note

Former Rule III; Amended effective March 9, 1981 (Supp. 81-2). R20-5-303 recodified from R4-13-303 (Supp. 95-1). Section R20-5-303 repealed; new Section R20-5-303 adopted effective September 9, 1998 (Supp. 98-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 297, effective January 3, 2017 (Supp. 17-1).

R20-5-304. Expired

Historical Note

Former Rule IV; Amended effective March 9, 1981 (Supp. 81-2). R20-5-304 recodified from R4-13-304 (Supp. 95-1). Section R20-5-304 repealed; new Section R20-5-304 adopted effective September 9, 1998 (Supp. 98-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 297, effective January 3, 2017 (Supp. 17-1).

R20-5-305. Expired

Historical Note

Former Rule V; Former Section R4-13-305 renumbered and amended as Section R4-13-306, new Section R20-5-305 adopted effective March 9, 1981 (Supp. 81-2). R20-5-305 recodified from R4-13-305 (Supp. 95-1). Section R20-5-305 repealed; new Section R20-5-305 adopted effective September 9, 1998 (Supp. 98-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 297, effective January 3, 2017 (Supp. 17-1).

R20-5-306. Expired

Historical Note

Former Rule VI. Former Section R4-13-306 renumbered and amended as Section R4-13-307, former Section R4-13-305 renumbered and amended as Section R4-13-306 effective March 9, 1981 (Supp. 81-2). R20-5-306 recodified from R4-13-306 (Supp. 95-1). Section R20-5-306 repealed; new Section R20-5-306 adopted effective September 9, 1998 (Supp. 98-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 297, effective January 3, 2017 (Supp. 17-1).

R20-5-307. Expired

Historical Note

Former Rule VII. Former Section R4-13-307 renumbered as Section R4-13-309, former Section R4-13-306 renumbered and amended as Section R4-13-307 effective

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Historical Note

Adopted effective May 3, 1989 (Supp. 89-2). R20-5-680
recodified from R4-13-680 (Supp. 95-1).

R20-5-681. Elements of a Violation of A.R.S. § 23-425

To establish a violation of A.R.S. § 23-425(A), the employee shall prove all of the following:

1. The employee was engaged in protected activities as defined in R20-5-680.
2. The employer had knowledge of the employee's protected activities prior to the adverse action which the employee claims to be a discharge or discrimination.
3. The action claimed to be discharge or discrimination was adverse to the employee.
4. The protected activity was a substantial reason for the alleged discharge or discrimination or the alleged discharge or discrimination would not have taken place but for the employee's engagement in the protected activity.

Historical Note

Adopted effective May 3, 1989 (Supp. 89-2). R20-5-681
recodified from R4-13-681 (Supp. 95-1).

R20-5-682. Procedure

- A. A complaint of A.R.S. § 23-425(A) discharge or discrimination shall be filed with the Division of Occupational Safety and Health by the employee or by a representative authorized by A.R.S. § 23-408(F) to do so on the employee's behalf. The complaint shall be written and shall be signed by the person filing the complaint.
- B. The date of filing a complaint under A.R.S. § 23-425(B) is the date of receipt of the complaint by the Division.
- C. The Division may accept or deny an employee's withdrawal of a complaint. The Industrial Commission's investigatory jurisdiction shall not be foreclosed by unilateral action of the employee.
- D. The Industrial Commission may resolve an A.R.S. § 23-425 complaint with the employer without the consent of the employee.
- E. The Industrial Commission's jurisdiction to investigate and determine A.R.S. § 23-425 complaints is independent of the jurisdiction of other agencies or bodies. The Industrial Commission may defer to the results of other such proceedings where:
 1. The rights asserted in those other proceedings are substantially the same as the rights pursuant to A.R.S. § 23-425;
 2. The factual issues in such proceedings are substantially the same as the factual issues before the Industrial Commission;
 3. The proceedings were fair and regular; and
 4. The outcome of the proceedings was not inconsistent with the purposes of this Chapter and the Act.
- F. A determination pursuant to A.R.S. § 23-425(C) includes:
 1. A decision to not proceed with the case;
 2. To defer the case to another forum; or
 3. To proceed to litigation in Superior Court.

Historical Note

Adopted effective May 3, 1989 (Supp. 89-2). R20-5-682
recodified from R4-13-682 (Supp. 95-1).

**ARTICLE 7. SELF-INSURANCE REQUIREMENTS FOR
WORKERS' COMPENSATION POOLS ORGANIZED
UNDER A.R.S. § 23-961.01**

R20-5-701. Definitions

In addition to the definitions provided in A.R.S. § 23-901, the following definitions apply to this Article:

"Administrator" means an individual or organization chosen by a board to manage the daily operations of a pool.

"Applicant" means a worker compensation pool organized under A.R.S. § 23-961.01 that has filed an initial application for authority to self-insure.

"Board of trustees" or "board" means a body of individuals that manage all operations of a worker compensation pool.

"Cash flow ratio" means a numerical relationship that reflects an ability to meet current financial obligations out of cash flow and is calculated by dividing funds received from operations of a business by current liabilities.

"Certificate of authority" means a document issued by the Commission granting a pool authority to be self-insured for purposes of workers' compensation.

"Claim" means a worker compensation claim.

"Code classification" means a number assigned by an approved rating organization that classifies employees.

"Current ratio" means a numerical relationship that reflects an ability to pay current obligations and is calculated by dividing current assets by current liabilities.

"Debt status ratio" means a numerical relationship that reflects the proportion of funds supplied internally relative to the funds supplied by creditors and is calculated by dividing net worth by total liabilities.

"Division" means the Administration Division of the Industrial Commission of Arizona.

"Excess insurance carrier" means an insurance carrier authorized by the Arizona Department of Insurance to issue policies of excess insurance coverage and casualty insurance coverage to a self-insured.

"Experience modification rate" means a ratio comparing actual losses to expected losses based on a formula determined by an approved rating organization and which includes three years of loss information.

"Financial rating organization" means a nationally recognized organization such as Standard & Poor's or Moody's that evaluates and rates securities.

"Fiscal year" means a 12 month cycle that begins from the effective date of authority to self-insure.

"Loss fund" means an account from which money is used to pay all workers' compensation expenses including current and contingent liabilities of a worker's compensation claim of a pool.

"Member" means an employer described in A.R.S. § 23-961.01 that has joined with other employers to form a pool.

"Pool" means a workers' compensation group organized under A.R.S. § 23-961.01.

"Profitability ratio" means a numerical relationship that represents the return on assets and the efficiency of assets and is calculated by dividing profit before taxes by total assets, multiplied by 100.

"Quick ratio" means a numerical relationship that represents the degree to which liabilities are covered by the most liquid current assets and is calculated by dividing cash and equivalents, plus trade receivables, by current liabilities.

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“Rate” means an assignment of a code classification based on risk as established by a rating organization and approved by the Arizona Department of Insurance.

“Rating organization” means an entity that meets the requirements of A.R.S. § 20-363(F) and is approved by the Arizona Department of Insurance to establish rates, codes, and formulas used to calculate worker compensation premiums.

“Service company” means an entity or organization that is contracted by a pool to receive, process, and pay workers’ compensation claims for a pool.

“Trustee fund” means an account into which premiums, investment proceeds, and other revenues are deposited and are used to cover all administrative or operational expenses of a pool.

“Working capital ratio” means a numerical relationship that measures the sufficiency of working capital to support sales and is calculated by dividing working capital by sales.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-702. Computation of Time

- A.** In computing any period of time prescribed or allowed by this Article, the Commission shall not include the day of the act or event from which the period of time begins to run. The Commission shall include the last day of the period computed unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, the Commission shall exclude intermediate Saturdays, Sundays, and legal holidays in the computation of time.
- B.** Except as otherwise provided by law, the Commission may extend time limits prescribed by this Article for good cause.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-703. Forms Prescribed by the Commission

The following forms are available upon request from the Commission and contain requests for the information listed in each subsection.

1. Initial Application for Authority to Self-insure:
 - a. Name of the pool;
 - b. Address and telephone number of the pool’s principal office;
 - c. Effective date of formation of the pool;
 - d. Name and address of each member of the pool;
 - e. Two digit standard industrial classification code for each member of the pool;
 - f. Name and address of the industry or trade association, or professional organization to which members of the pool belong;
 - g. Effective date of formation of the industry or trade association, or professional organization to which members of the pool belong;
 - h. Type of business in which members are engaged and length of time in business for each member;
 - i. Explanation of how businesses of members are the same or similar;
 - j. Amount of workers’ compensation insurance premiums paid by each member in the preceding year;
 - k. Names and addresses of the board of trustees;
 - l. Name, address, and telephone number of the administrator appointed by the board of trustees;
 - m. Name, address, and telephone number of the service company, if applicable;

- n. Names, titles, addresses, and telephone numbers of the persons in charge of the loss control and underwriting programs;
 - o. Premium tax plan selection;
 - p. Authorized signature and title of person signing initial application;
 - q. Statement that all information and assertions contained in the application and the documents accompanying the application are factually correct and true; and
 - r. Date of execution of the initial application.
2. Renewal Application:
 - a. Name of the pool;
 - b. Address and telephone number of the pool’s principal office;
 - c. Name and address of each member of the pool and the effective date of membership;
 - d. Renewal date of the pool;
 - e. Effective date of initial authority to self-insure;
 - f. Total number of member employees covered by the pool;
 - g. Total payroll of the pool for the last fiscal year;
 - h. Name, address, and telephone number of the administrator;
 - i. Name, address, and telephone number of the service company, if applicable;
 - j. Name, address, and telephone number of the excess insurance carrier;
 - k. Name and address of the companies providing guaranty bond and fidelity policy;
 - l. Name and address of individuals serving on the board of trustees;
 - m. Names, titles, addresses, and telephone numbers of persons in charge of loss control and underwriting programs;
 - n. Authorized signature and title of person signing renewal application;
 - o. Statement that all information and assertions contained in the renewal application and the documents accompanying the renewal application are factually correct and true; and
 - p. Date of execution of the renewal application.
 3. Self-Insurance Guaranty Bond Form:
 - a. Pool identification;
 - b. Names of fidelity and surety insurance companies;
 - c. Description of the bond, including the amount and conditions of the bond obligations and liability of surety;
 - d. Statement regarding the responsibility for fees and costs associated with the collection of the bond and the responsibility for payment of any award or judgment against the surety;
 - e. Authorized signatures and titles by pool, surety, and agent; and
 - f. Date of execution of the guaranty bond form.
 4. Option Election Form:
 - a. Calculation and selection of type of guaranty bond and securities;
 - b. Description of incurred liability and anticipated future liability (compensation and medical) on all open cases for the preceding four years and the current year;
 - c. Authorized signature and title of person signing option election form;
 - d. Statement that all information and assertions contained in the form are factually correct and true; and
 - e. Date of execution of the option election form.

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5. Self-insured Payroll Report:
 - a. Description of the cumulative payroll for all members of the pool (classification codes, methods and types of pay);
 - b. Amount paid in the preceding calendar year;
 - c. Authorized signature and title of person signing self-insured payroll report;
 - d. Statement that all information and assertions contained in the report are factually correct and true; and
 - e. Date of execution of self-insured payroll report.
6. Self-insured Medical Report:
 - a. Description of costs relating to industrial injuries;
 - b. Reinsurance premiums paid;
 - c. Total expenditures for workers' compensation and occupational disease claims;
 - d. Authorized signature and title of person signing self-insured medical report;
 - e. Statement that all information and assertions contained in the report are factually correct and true; and
 - f. Date of execution of the self-insured medical report.
7. Self-insured Injury Report:
 - a. Description of specific information for the current year and three preceding years for each injury requiring payment in excess of \$5000 which includes accumulated amount paid and reserved for each claim in excess of \$5,000;
 - b. Description of all injuries for the current year and three preceding years if individual injury required payment of less than \$5,000;
 - c. Authorized signature, title, and telephone number of person signing self-insured injury report;
 - d. Statement that all information and assertions contained in the report are factually correct and true; and
 - e. Date of execution of the self-insured injury report.
8. Quarterly Tax Payment Form:
 - a. Name and address of the pool;
 - b. Description and calculation of the quarterly tax and designation of the applicable quarter;
 - c. Amount of annual tax paid in the previous calendar year; amount of the quarterly tax paid adjusted for change in the tax rate;
 - d. Description and calculation of any penalty due;
 - e. Authorized signature, title and telephone number of person signing the quarterly tax payment form;
 - f. Statement that all information and assertions contained in the form are factually correct and true; and
 - g. Date of execution of the quarterly tax payment form.
9. Application to Add a Member to Self-insured Pool:
 - a. Name of the pool and name of the member to be added to the pool, including if applicable, addresses, corporation, subsidiary, partnership, and trust information;
 - b. Nature and years in business of the member to be added;
 - c. History of business in Arizona and elsewhere for the member to be added;
 - d. Payroll data for each member to be added;
 - e. Work force data for each member to be added;
 - f. Financial data for each member to be added;
 - g. Insurance data for each member to be added;
 - h. Two digit standard industrial classification code for each member of the pool;
 - i. Workers' compensation claims, loss and performance history for the member to be added;
 - j. Authorization by board resolution approving addition of each new member;
 - k. Authorized signature and title of person signing application;
 - l. Statement that all information and assertions contained in the application are factually correct and true; and
 - m. Date of execution of the application.
10. Notice Confirming Addition of Member to Pool:
 - a. Name of the pool;
 - b. Name and address of the new member;
 - c. Effective date of membership;
 - d. Rate and code classification to be applied to new member;
 - e. Standard industrial classification code for new member;
 - f. Authorized signature and title of person signing notice;
 - g. Statement that all information and assertions contained in the notice are factually correct and true; and
 - h. Date of execution of the notice.
11. Notice of Termination of Membership:
 - a. Name and address of pool;
 - b. Effective date of termination;
 - c. Name and address of the member to be terminated, identified as follows:
 - i. All names and addresses of every location used by the member;
 - ii. If the member is a partnership, the names and addresses of all the partners;
 - iii. If the member is a corporation doing business under a number of divisions, the notice shall state the names of all the divisions of the corporation; and
 - iv. If a member changes names, both the new and former names.
 - d. Authorized signature, title and telephone number of person signing notice;
 - e. Statement that all information and assertions contained in the notice are factually correct and true; and
 - f. Date of execution of the notice.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-704. Requirement for Commission Approval to Act as Self-insurer

A pool does not have authority to act as a self-insurer under A.R.S. §§ 23-961 and 23-961.01 unless the pool receives and maintains a certificate of authority from the Commission.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-705. Duration of Certificate of Authority

Except as provided in this subsection, a certificate of authority is valid for one fiscal year. The Commission may renew the certificate on an annual basis upon application by a pool. If a pool timely files a complete renewal application under this Article, the Commission shall consider the existing certificate of authority valid, subject to compliance with A.R.S. § 23-901 et seq. and this Article, until a new certificate of authority is issued or an order of the Commission denying a renewal application becomes final.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-706. Time-frames for Processing Initial and Renewal

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Application for Authority to Self-insure**A. Administrative completeness review.**

1. Initial application. The Division shall review an initial application for authority to self-insure within 20 days of receipt of the application to determine if the application contains the information required by A.R.S. § 23-961.01 and this Article. The Division shall inform an applicant by written notice whether the application is complete or is deficient within the time-frame provided in this subsection. If the application is incomplete, the Division shall include in its written notice to the applicant a complete list of the missing information. The Division shall deem the application withdrawn if an applicant fails to file a complete application within 45 days of being notified by the Division that its application is incomplete or deficient.
2. Renewal application. The Division shall review a renewal application for authority to self-insure within 20 days of receipt of the application to determine if the application contains the information required by A.R.S. § 23-961.01 and this Article. The Division shall inform a pool by written notice whether the application is complete or is deficient within the time-frame provided in this subsection. If the renewal application is incomplete, the Division shall include in its written notice to the pool a complete list of the missing information. The Division shall deem the application withdrawn if a pool fails to file a complete application within 45 days of being notified by the Division that its application is incomplete or deficient, except that failure to file the financial and actuarial reports required under R20-5-708(C) shall not cause the Division to deem the application withdrawn if a pool files the financial and actuarial reports with the Division within 120 days after the end of the pool's fiscal year.

B. Substantive review.

1. Initial application. Within 70 days after the Division deems an initial application complete, the Commission shall determine whether an initial application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961.01 and this Article and shall issue an order granting or denying authority to self-insure.
2. Renewal application. Within 40 days after the Division deems a renewal application complete, the Commission shall determine whether a renewal application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961.01 and this Article and shall issue an order granting or denying authority to self-insure.

C. Overall review.

1. Initial application. The overall review period shall be 90 days, unless extended under A.R.S. § 41-1072 et seq.
2. Renewal application. The overall review period shall be 60 days, unless extended under A.R.S. § 41-1072 et seq.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-707. Filing Requirements for Initial Application for Self-Insurance License**A. Initial application for authorization to self-insure.**

1. An application for authority to self-insure shall be completed on forms approved by the Commission.
2. An application for authority to self-insure shall be filed with the Division. An application is considered filed when it is received at the office of the Division.
3. An application shall be typewritten or written in ink in legible text.
4. The administrator of a pool shall sign the application. The signature of the administrator shall be notarized.

5. The administrator shall verify, in writing, that the information contained in and submitted with the application is true and correct.

B. The Commission shall deem an initial application for authority to self-insure complete if an applicant provides the following information with the initial application:

1. A copy of the contract required under A.R.S. § 23-961.01 establishing the pool;
2. A copy of the articles of incorporation establishing the pool, if applicable;
3. A copy of the trust agreement establishing the pool, if applicable;
4. A copy of the by-laws governing the operations of the pool;
5. An original, signed application to join the pool from every employer receiving approval from the board to join the pool;
6. A resolution from the board approving employers for membership in the pool;
7. A certified copy of an audited financial statement or an internally reviewed and signed financial statement for each employer applying for membership in the pool for the most current and prior two years that, considered collectively, demonstrate that the combined net worth of the employers applying for membership at the time of the initial application is not less than \$1,000,000;
8. A copy of the following financial ratios for each employer applying for membership in the pool:
 - a. Cash flow ratio;
 - b. Current ratio;
 - c. Debt status ratio;
 - d. Profitability ratio;
 - e. Quick ratio; and
 - f. Working capital ratio.
9. A detailed description of the loss control program required under R20-5-727, including a description of training programs and safety requirements implemented or to be implemented;
10. A written statement from each member with an experience modification rate greater than 1.10 describing the causes of the member's experience modification rate and outlining remedial measures the member has taken and will take to lower the member's experience modification rate;
11. An original, signed fidelity policy, or a certified copy, that meets the requirements of R20-5-712, or written confirmation from an authorized insurance company that it will provide fidelity coverage to the applicant as required under R20-5-712 which coverage is effective on the date the applicant is approved by the Industrial Commission to begin self-insurance;
12. An original, signed guaranty bond, securities, or letter of credit that meets the requirements of R20-5-713 or any of the following:
 - a. Written confirmation from an authorized insurance company that it will provide a guaranty bond to the applicant as required under R20-5-713 which shall be deposited with the Industrial Commission before approval for self-insurance is effective,
 - b. Written confirmation from a financial institution that it will provide a letter of credit to the applicant as required under R20-5-713 which is effective when approval for self-insurance is effective, or
 - c. Written confirmation from a pool that it will obtain securities as required under R20-5-713 which shall be deposited with the Arizona State Treasurer before approval for self-insurance is effective.

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13. A completed and signed Option Election Form and Self-Insurance Bond Form;
 14. A copy of excess insurance policies issued by an authorized carrier that meet the requirements of R20-5-715 or written confirmation from an authorized insurance company that it will provide excess insurance coverage to the applicant as required under R20-5-715. The excess coverage shall be effective on the date the applicant is approved by the Industrial Commission to begin self-insurance;
 15. A copy of the signed agreement or contract of hire between a board and the administrator of the pool;
 16. A designation of a service company and a copy of the signed agreement between the service company and pool that meet the requirements of R20-5-725 or a written statement with supporting documentation required under R20-5-726 requesting authorization to process claims in-house;
 17. A list of all rates by code classification to be used by the pool to calculate premiums;
 18. A statement showing how premiums shall be calculated for members;
 19. A detailed description of the underwriting program required under R20-5-727;
 20. A feasibility study by a member of the American Academy of Actuaries (MAAA) or a Fellow of the Casualty Actuarial Society (FCAS) that documents the rate structure needed to set premium levels to cover potential losses and expenses of the pool; and
 21. A schedule showing net workers' compensation premiums paid, total losses incurred, and experience modification rates for the three preceding years for each employer applying for membership in the pool.
3. A confirmation of excess insurance policies issued by an authorized carrier that meet the requirements of R20-5-715;
 4. A copy of a signed service contract that meets the requirements of R20-5-725 designating an approved service company or a written statement with supporting documentation required under R20-5-726 requesting authorization to process claims in-house;
 5. A continuation certificate for the fidelity policy that meets the requirements of R20-5-712;
 6. A statement of any change made in the rates and code classifications utilized by the pool to calculate workers' compensation premiums;
 7. A statement of any change in the calculation method of a premium for each member;
 8. A statement describing the expenses paid from the trustee fund and the loss fund expressed in a dollar amount and as a percentage of the total premiums collected by the pool in the preceding fiscal year;
 9. A copy of the current contract or agreement of hire between the pool and administrator; and
 10. A copy of the current delegation agreement between the board of trustees and administrator, if applicable, under R20-5-719(C).

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-708. Filing Requirements for Renewal Application for Self-Insurance License

- A. A self-insured pool seeking renewal of an authority to self-insure for workers' compensation insurance shall file a renewal application 30 days before the existing certificate of authority expires. A pool shall maintain all bonds, policies, and contracts required under this Article while a renewal application is pending before the Commission. The Commission shall deem a renewal application withdrawn if a pool fails to maintain all bonds, policies, and contracts required under this Article.
- B. A renewal application shall meet the following requirements:
 1. An application for renewal of authority to self-insure shall be completed on a form approved by the Commission;
 2. An application for renewal of authority to self-insure shall be filed with the Division. An application is considered filed when it is received at the office of the Division;
 3. An application shall be typewritten or written in ink in legible text;
 4. The administrator of a pool shall sign the application. The signature of the administrator shall be notarized; and
 5. The administrator shall verify, in writing, that the information contained in and submitted with the application is true and correct.
- C. A self-insured pool shall provide the following information at the time the pool files a renewal application:
 1. An updated, completed and signed Option Election Form;
 2. A continuation certificate for the guaranty bond or letter of credit signed by an authorized representative of the surety or bank in an amount equal to the amount set forth

- D. No later than 120 days after the end of a pool's fiscal year, the pool shall file with the Division a copy of the pool's most recent audited annual financial statements and a copy of the pool's most recent actuarial review of:
 1. Losses and reserves for all known claims, and
 2. Reserves for incurred but not reported claims.
- E. The Commission shall deem a renewal application complete when a pool provides the information required under subsections (C) and (D).
- F. If a pool does not file a renewal application, each member of the pool shall provide the Commission proof of compliance with A.R.S. § 23-961(A) no later than 10 days after the pool's certificate of authority expires.
- G. If a pool's renewal application is deemed withdrawn under this Section, each member of the pool shall provide proof of compliance with A.R.S. § 23-961(A) no later than 10 days after the date the Commission deems the application withdrawn.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-709. Combined Net Worth

A pool shall ensure that the combined net worth of its members is at least \$1 million at the time the pool files an initial application for authority to self-insure.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-710. Similar Industry Requirement

The Commission shall consider the following in determining whether two or more employers meet the similar industry requirement of A.R.S. § 23-961.01:

1. Two digit standard industrial classification code established by the 1987 Standard Industrial Classification Manual assigned to an employer applying for membership in the pool; and
2. Other information describing or concerning the business of an employer applying for membership in the pool. The Commission may solicit additional written or oral information from a pool or others to assist the Commission in determining whether two or more employers are engaged in a similar industry.

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Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-711. Joint and Several Liability of Members

- A. The joint and several liability provision described under A.R.S. § 23-961.01(E) shall include the following meaning:
1. Liability of members. Each member is liable for its own workers' compensation claims or losses incurred during the member's period of membership in the pool to the extent that the pool does not pay the claims or losses. A member's liability for its own claims or losses continues for the life of the claims and continues notwithstanding the pool's inability to process or pay the member's claims or losses. Failure of the pool to comply with the provisions of the Arizona Workers' Compensation Act relating to payment and processing of claims shall result in the assignment of the claims to the State Compensation Fund under A.R.S. § 23-966 and shall not relieve a member of liability for its own losses or claims. In the event that claims are assigned to the State Compensation Fund under A.R.S. § 23-966, the Industrial Commission shall have a right of reimbursement against the member for the amount paid by the State Compensation Fund for the member's own claims and losses, including costs, necessary expenses and reasonable attorney's fees, to the extent that such claims and losses are not covered by the pool's bonds or assets.
 2. Liability of a pool. The pool shall pay all claims for which each member incurs liability during each member's period of membership. The pool shall defend, in the name of and on behalf of any member, any action or other proceeding which may arise or be instituted against a member as a result of injury or death covered by the Arizona Workers' Compensation Act and accompanying rules. The pool shall pay all legal costs and all expenses incurred for investigation, negotiation or defense related to such action or proceeding. The pool shall also pay all judgments or awards, and all interest due and accruing after a judgment.
- B. The joint and several liability clause required under A.R.S. § 23-961.01 to be included in each agreement or contract to establish a pool shall include the language in subsection (A)(1) and (2).
- C. The joint and several liability clause required under A.R.S. § 23-961.01(E) applies to any agreement used to form a pool on a cooperative or contract basis, through a joint formation of a nonprofit corporation, or by the execution of a trust agreement.
- D. A pool shall ensure that all members read and agree, in writing, to the joint and several clause required under A.R.S. § 23-961.01 and described in subsection (A).
- E. Failure to comply with the requirements of A.R.S. § 23-961.01(E) and this Section is cause for revocation of authority to self-insure.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-712. Fidelity Policy

- A. A pool shall obtain and maintain during all periods of self-insurance a fidelity policy to protect the pool from unlawful actions of the following:
1. Individuals appointed to the pool's board of trustees (individual and collective liability),
 2. Administrator of the pool, and
 3. Employees of the pool.
- B. The amount of the fidelity policy in subsection (A) shall be at least \$1 million. A pool may purchase a fidelity policy in excess of \$1 million if the pool determines that a policy in

excess of \$1 million is necessary to protect members of the pool from damages resulting from misrepresentation or misuse of any monies or securities owned, controlled, or managed by the board, administrator, or employees of the pool.

- C. The pool shall provide the Commission proof of the fidelity policy as required under R20-5-707 and R20-5-708.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-713. Guaranty Bond

- A. A pool shall obtain and maintain during all periods of self-insurance a guaranty bond equal to the greater of either:
1. 125% of the total outstanding accrued liability as reflected in the option election form described in subsection (B); or
 2. \$200,000.
- B. A pool shall complete and sign an option election form when an initial or renewal application is filed to determine the amount of the bond or securities required to cover the pool's losses. A pool shall ensure that the information contained in the option election form is in agreement with the data provided in the actuarial report. A guaranty bond or continuation certificate for the guaranty bond shall be in the amount established in the option election form.
- C. A guaranty bond or continuation certificate for the guaranty bond filed with the Commission shall bear the effective date of the certificate of authority under which the pool is authorized to self-insure. The guaranty bond or continuation certificate shall be valid for a period of one year, subject to annual renewal in the amount established in the Option Election Form filed with a renewal application.
- D. A guaranty bond or continuation certificate for the guaranty bond shall be issued by an insurance carrier authorized by the Arizona Department of Insurance to transact fidelity and surety insurance in Arizona. The guaranty bond and continuation certificate shall be executed by an authorized agent of a surety, as evidenced by a certified power of attorney, and countersigned by a licensed resident agent.
- E. Instead of posting a guaranty bond, a pool may either deposit with the Commission for transmittal to the Arizona State Treasurer, bonds of the United States or other securities. The amount of the bond or securities shall bear a face value equal to the requirements of subsections (A) and (B).
- F. Instead of posting a guaranty bond, a pool may obtain a letter of credit. The amount of the letter of credit shall be equal to the requirements of subsections (A) and (B).
- G. The Commission shall not accept certificates of deposit instead of a guaranty bond, securities, or letter of credit.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-714. Securities Deposited with the Arizona State Treasurer

- A. Any securities deposited with Arizona State Treasurer under R20-5-713(E) shall be registered as follows: "The Industrial Commission of Arizona, in trust for the fulfillment by (name of pool), of (name of pool's) obligations under the Arizona Workers' Compensation Act."
- B. The securities shall be held by the State Treasurer, as custodian, subject to the order of and in trust for, the Industrial Commission of Arizona.
- C. The Commission shall have the following powers with regard to securities held by the State Treasurer:
1. To collect or order the collection of the securities as they become due;
 2. To sell or order the sale of the securities, or any part of the securities; and

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3. To apply or order the application of the proceeds of the sale of securities, to the payment of any award rendered against the pool in the event of a default in the payment of a pool's obligations under the Arizona Workers' Compensation Act.
- D. The Commission shall remit, upon request from a pool that has deposited securities for transmittal to the State Treasurer, interest coupons on securities as they mature.
- B. A pool shall calculate a member's workers' compensation premium and experience modification rate using formulas described in a rating plan that meets the following:
1. The rating plan is filed by an Arizona licensed rating organization, and
 2. The rating plan has not been disapproved by the Arizona Department of Insurance.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-715. Aggregate and Specific Excess Insurance Policies

- A. A pool shall maintain aggregate and specific excess insurance policies during all periods of self-insurance.
- B. The Commission shall not consider policies of aggregate and specific excess insurance when determining a pool's ability to fulfill its financial obligations under the Arizona Workers' Compensation Act, unless the policies are issued by a casualty insurance company authorized by the Arizona Department of Insurance to transact business in Arizona.
- C. A pool or insurance company seeking to cancel or refuse renewal of aggregate and specific excess insurance policies shall provide 90 days written notice of the proposed cancellation or non-renewal to the other party to the policies and to the Commission. The written notice shall be by registered or certified mail. Failure to provide notice as required by this Section precludes cancellation or non-renewal of the policies.
- D. Policy and Retention Amounts.
1. Policy and retention amounts for specific and aggregate excess insurance for a pool shall be as follows:
 - a. Retention for specific excess insurance shall not be less than \$100,000 nor exceed \$1,250,000 without advance written approval by the Commission. Specific excess insurance shall be provided to the statutory limit; and
 - b. Maximum retention of aggregate excess insurance shall not exceed 150% of collected premiums. Total aggregate insurance coverage shall not be less than \$1,000,000.
 2. Aggregate and specific excess insurance policies shall state that payments of workers' compensation benefits on a claim made by a member employer, pool, or surety under a bond or through the use of other approved securities shall be applied toward reaching the retention level in the policy.
- E. Deviations from rates.
1. A pool shall not deviate from established workers' compensation rates unless the pool complies with the following:
 - a. The deviation is based upon the expense and loss experience of the pool,
 - b. The deviation is supported and justified by an actuary's feasibility study, and
 - c. The pool provides the information required under this subsection to the Division and receives approval from the Division.
 2. The Division shall approve the deviation if the deviation is based upon the expense and loss experience of a pool and is justified in an actuary's feasibility study.
- E. Refunds. A pool may declare a refund of surplus money, including excess investment income, to its members under the following conditions:
1. Surplus money exists, including excess investment money, for a fiscal year in excess of the amount necessary to meet all financial obligations for the fiscal year, including financial obligations arising from incurred but not reported claims;
 2. Total assets of a pool are greater than total liabilities for each fiscal year;
 3. An actuary approves the amount of the refund;
 4. The amount of refund is a fixed liability of the pool at the time the refund is declared; and
 5. The board sets a date for the refund that shall not be less than 12 months after the end of the fiscal year in which the excess is reported.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).
Amended by final rulemaking at 22 A.A.R. 2782, effective September 7, 2016 (Supp. 16-3).

R20-5-716. Rates and Code Classifications; Penalty Rate

- A. A pool shall only use rates and code classifications obtained from a rating organization licensed by the Arizona Department of Insurance.
- B. A pool may apply a penalty rate in excess of an annual premium to any member with an unfavorable loss experience, provided the pool provides written notice to the member 30 days before the effective date of the change in rate.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-717. Gross Annual Premium of Pool; Calculation and Payment of Workers' Compensation Premiums; Discounts; Refunds

- A. The gross annual workers' compensation premium for a pool shall be sufficient to fund the administrative expenses and total incurred losses of the pool.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-718. Financial Statements

- A. A pool shall ensure that a financial statement is prepared annually at the end of its fiscal year by a certified public accountant who has experience in auditing insurance carriers or self-insured pools. The financial statement shall be accompanied by an actuarial report regarding reserves for claims and associated expenses, and claims incurred, but not reported.
- B. A pool shall ensure that reported reserves in a financial statement are established based on 110% of an actuary's best estimate.
- C. A pool shall ensure that an actuarial opinion is rendered by an actuary who is a member of the Academy of Actuaries (MAAA) or a fellow of the Casualty Actuarial Society (FCAS).
- D. A pool shall ensure that the pool's annual financial statement described in subsection (A) is audited by a certified public accountant. The audit shall include:

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1. An evaluation and statement from the certified public accountant whether invested surplus money was invested in compliance with R20-5-724;
 2. A description of how the pool operates; and
 3. A statement whether the pool complied with statutes and rules governing self-insured workers' compensation pools as it relates to financial matters.
- E. Upon request by the Commission or within 120 days after a pool's fiscal year ends, a pool shall file its annual financial statement with the Commission. If a pool stops providing coverage on an ongoing basis or fails to file a renewal application for authorization to self-insure, then the pool shall provide its annual financial statement within 120 days after the pool's fiscal year ends.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-719. Board of Trustees

- A. A pool shall be managed by a board of trustees consisting of at least five individuals elected for a stated term of office. At least 2/3 of a board shall be from the membership of the pool.
- B. Minimum duties and responsibilities of a board. In addition to those duties and responsibilities provided by law, the duties of a board shall include:
 1. Responsibility for all operations of a pool;
 2. Ensuring compliance with this Article and the applicable provisions of the Arizona Workers' Compensation Act;
 3. Hiring of an administrator to manage the daily operations of a pool;
 4. Reviewing and taking action on applications for membership in a pool;
 5. Contracting with a service company or seeking authorization from the Commission to process workers' compensation claims in-house;
 6. Determining the premium to be charged to a member;
 7. Investing surplus monies in compliance with this Article and other applicable law;
 8. Enacting procedures that limit disbursement of money to payment and expenses associated with claims processing and administrative expenses necessary to conduct the operations of the pool;
 9. Ensuring that the pool complies with statutory accounting principles (SAP) and provides accurate financial information to enable complete and accurate preparation of financial reports;
 10. Maintaining all records and documents relating to the formation and ongoing operations of the pool; and
 11. Ensuring that accounts and records of the pool are audited as required under this Article.
- C. Delegation of board duties to administrator.
 1. Except as prohibited by law, a board may delegate to an administrator the duties the board determines proper.
 2. Delegation of duties from a board to an administrator shall be in writing. A copy of the delegation agreement shall be provided to the Commission with each renewal application.
- D. Board prohibitions. A board or board trustee shall not commit or perform the following acts:
 1. Extend credit to members for payment of a premium;
 2. Utilize money collected as premiums for a purpose unauthorized by this Article;
 3. Borrow money from a pool or in the name of a pool without providing written notice to the Commission of the nature and purpose of the loan; and
 4. Approve admission into a pool an employer who has a negative net worth and whose admission would impair the ability of the pool to meet its financial obligations

under the Arizona Workers' Compensation Act.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-720. Administrator; Prohibitions; Disclosure of Interest

- A. An administrator of a pool shall not be a member of a board of trustees of a workers' compensation pool.
- B. An administrator shall not commit any of the acts described in R20-5-719(D).
- C. An administrator shall disclose to a board any actual or perceived employment or financial interest that the administrator or administrator's family has in any potential provider of services or insurance coverage to the pool. The administrator shall disclose the interest before a contract or agreement is reached with the company or business providing the service or coverage. If a pool has an existing contract or agreement in which a prospective administrator or administrator's family has an actual or perceived employment or financial interest, the administrator shall disclose the interest before accepting a position as administrator for the pool. It is the responsibility of a board to identify for a prospective administrator current providers of services and coverage to the pool.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-721. Admission of Employers into an Existing Workers' Compensation Pool

- A. An employer that meets the requirements of A.R.S. § 23-961.01 and this Article that seeks to join an existing pool shall submit an application for membership to the board of trustees of the pool, or the board's designee, on a form approved by the Commission.
- B. Consideration of application by a board.
 1. A board shall approve or deny admission in the pool according to the bylaws of the pool and other applicable statutes and rules.
 2. Upon approval of admission of an employer by a board, the board shall transmit the original application of the employer and board resolution approving membership to the Commission for consideration and approval.
- C. Commission Approval.
 1. Except as provided in subsection (C)(2), within seven days after receiving an employer application described in subsection (B)(2), the Division shall advise the pool whether the employer application is complete. Within 45 days after receiving a complete employer application described in subsection (B)(2), the Commission shall consider the application and shall approve the admission of an employer into a pool if each of the following requirements are met:
 - a. The employer meets the requirements of A.R.S. § 23-961.01 and this Article;
 - b. Admission of the employer into the pool does not impair the ability of the pool to meet the requirements of A.R.S. § 23-961.01 and this Article;
 - c. Admission of the employer into the pool does not impair the ability of the pool to meet its financial obligations under the Arizona Workers' Compensation Act.
 2. After a pool has completed one year of operation, the pool may request Commission authorization to admit new members without Commission approval. Within 30 days after receiving such a request, the Commission shall consider and approve the request to add members to a pool without Commission approval if the pool meets the following:

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- a. The pool uses the similar industry requirement set forth in R20-5-710 and provides a list or description of businesses that the pool will consider as being similar; and
 - b. The pool adopts as its own criteria for admission of new employers the criteria set forth in subsection (C)(1) and provides financial standards that the pool shall apply to employers seeking admission into the pool.
3. The Commission shall issue written findings and an order either approving or denying admission of an employer into a pool under subsection (C)(1) or approving or denying authorization to add members without Commission approval under subsection (C)(2). The Commission shall mail the findings and order upon the interested parties. The written findings and order is final unless a party files a request for hearing with the Administration Division within 10 days after the findings and order is issued. Hearing rights and procedure are governed by R20-5-736, R20-5-737, and R20-5-738.

D. Admission of an employer under subsection (C)(2).

1. A pool shall require an employer applying for membership in the pool to provide a financial report that is either a certified audited financial statement or an internally reviewed and signed financial statement certified by an officer or representative of the employer applying for membership.
2. If a pool approves admission of a new employer into the pool, the pool shall send written notice to the Commission, on a form approved by the Commission, within 10 days and prior to the effective date of membership, confirming that the pool has admitted a new member.
3. In addition to the notice required under subsection (D)(2), the pool shall also provide to the Commission, the board resolution approving membership and a copy of the employer's application for admission into the pool.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-722. Termination by a Member in a Pool; Cancellation of Membership by a Pool; Final Accounting

- A.** A member of a pool may terminate its participation in the pool or submit to cancellation by a pool under the bylaws of the pool and other applicable statutes and rules.
- B.** A pool shall provide the Commission written notice of a member's intent to terminate membership or a pool's intent to cancel a member's participation in the pool at least 30 days before the termination or cancellation is effective on a form approved by the Commission.
- C.** A pool shall provide a final accounting and settlement of the obligations of or refunds to a terminated or canceled member when all incurred claims are concluded, settled, or paid.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-723. Trustee Fund; Loss Fund

- A.** A pool shall maintain a trustee fund and a loss fund.
- B.** Trustee fund.
 1. All premiums and assessments charged to members of a pool shall be paid to the trustee fund which fund shall be placed in a designated federally insured depository in Arizona.
 2. A pool shall create a loss fund from the trustee fund.
 3. A pool shall pay administrative expenses of the pool from the trustee fund.
 4. Money from the trustee fund shall be transferred to the loss fund as needed to enable a pool to pay from the loss

fund cash needs related to liabilities imposed or arising under the Arizona Workers' Compensation Act.

C. Loss fund.

1. A pool shall place its loss fund in a designated federally insured depository in Arizona.
2. A pool shall pay all workers' compensation expenses from the loss fund.
3. A loss fund shall be maintained at all times by an authorized service company or administrator charged with processing and paying workers' compensation claims.
4. A pool shall ensure that its loss fund is financially able to cover current cash needs related to liabilities imposed or arising under the Arizona Workers' Compensation Act.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-724. Investment Activity of a Pool

A pool may invest surplus money not needed for immediate cash needs under the following conditions:

1. Investments are limited to:
 - a. United States Government bonds;
 - b. United States Treasury notes;
 - c. Municipal and corporate bonds described under subsections (A)(2), (3), and (4);
 - d. Certificates of deposit;
 - e. Savings accounts in banks located in Arizona that are federally insured; and
 - f. Common or preferred stock.
2. Corporate and municipal bonds are restricted to the top three major investment grades as determined by two financial rating services;
3. Not more than 5% of a corporate municipal bond portfolio is invested in any one corporation or municipality;
4. Not more than 30% of the market value of a portfolio is in corporate and municipal bonds;
5. Not more than 20% of the market value of an investment portfolio is in common and preferred stocks; and
6. Not more than 5% of a common and preferred stock portfolio is invested in any one corporation.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-725. Service Companies; Qualifications; Contracts; Transfer of Claims

- A.** A pool shall obtain the services of a service company to process the pool's workers' compensation claims unless the pool obtains permission to process its own workers' compensation claims from the Commission under R20-5-726.
- B.** Qualifications of a service company.
 1. A service company shall have facilities and equipment to manage, process, and store workers' compensation claims;
 2. If required by law, a service company shall ensure that a licensed claims adjuster processes all workers' compensation claims. If a licensed claims adjuster is not required by law to process claims, then the service company shall ensure that workers' compensation claims are processed by persons with experience, training, and knowledge of the following:
 - a. Processing of Arizona workers' compensation claims; and
 - b. Arizona Worker's Compensation Act;
 3. Service company personnel processing workers' compensation claims shall attend and complete training provided by the Commission Claims Division.
- C.** A service company shall process and pay each worker's compensation claim in compliance with the Arizona Workers'

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Compensation Act and the rules. A contract between a pool and service company shall include this requirement.

- D.** Transfer of claims from one service company to another service company.
1. The transfer of claims from one service company to another service company shall be handled in a way that does not interfere with or interrupt the processing of a worker's compensation claim.
 2. A service company transferring a worker's compensation claim shall communicate to the new service company the historical claims processing activity associated with the worker's compensation claim, and shall provide an original or copy of every document required for continued processing of the worker's compensation claim.
 3. A pool shall immediately provide written notice to the Industrial Commission Claims Division of any transfer of a worker's compensation claim from one service company to another.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-726. Processing of Workers' Compensation Claims by a Pool

- A.** The Commission shall permit a pool to process its own workers' compensation claims if the pool provides information and supporting documentation establishing the following:
1. The pool has facilities and equipment to manage, process, and store its own workers' compensation claims;
 2. If required by law, a pool shall ensure that a licensed claims adjuster processes all workers' compensation claims. If a licensed claims adjuster is not required by law to process claims, then the pool shall ensure that workers' compensation claims are processed by persons with experience, training, and knowledge of the following:
 - a. Processing of Arizona workers' compensation claims; and
 - b. Arizona Workers' Compensation Act;
 3. Pool personnel processing workers' compensation claims shall attend and complete training provided by the Commission Claims Division.
- B.** A pool shall pay and process workers' compensation claims in compliance with the Arizona Workers' Compensation Act and the rules.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-727. Loss Control and Underwriting Programs

- A.** A pool shall maintain during all periods of self-insurance a loss control program that includes, at a minimum, written safety requirements and training programs for all employees of members.
- B.** A pool shall maintain during all periods of self-insurance an underwriting program that enables the pool to calculate and determine workers' compensation premiums due and to discharge the pool's responsibilities under the Arizona Workers' Compensation Act and this Article.
- C.** A pool shall ensure those persons with education, experience, or training in loss control administer the loss control program.
- D.** A pool shall ensure those persons with education, experience, or training in underwriting administer the underwriting program.
- E.** A pool shall maintain facilities and equipment to implement the loss control and underwriting programs.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-728. Insufficient Assets or Funds of a Pool; Plans of**Abatement; Notice of Bankruptcy**

- A.** A pool shall immediately provide written notice to the Commission if collected premiums and earned investment income for a fiscal year are insufficient to pay benefits under the Arizona Workers' Compensation Act for all reported workers' compensation claims and expenses for the year. When a pool provides notice to the Commission of the deficiency, the pool shall also provide a written proposal to achieve 100% funding. The proposal may include the following:
1. Use of premiums collected in other fiscal years, but not necessary for payment of claims or expenses in the year collected;
 2. Use of investment earnings associated with other fiscal years, but not necessary for payment of claims or expenses in the year in which associated; or
 3. Assessment of members.
- B.** The Commission shall review the proposal submitted under subsection (A) and approve the proposal within 10 days if the Commission determines that the proposal will abate the deficiency. A pool shall implement the plan no later than 30 days after the date the Commission approves the plan and shall achieve 100% funding within one year after the date the Commission approves the plan. Failure to implement the plan is cause for revocation of the pool's certificate of authority under R20-5-739.
- C.** If, as a result of an audit or examination by either a pool or the Commission, it appears that the assets of a pool are insufficient to enable the pool to discharge the pool's responsibilities under the Arizona Workers' Compensation Act and this Article, the Commission shall notify the administrator and the board of the deficiency and issue an order to abate the deficiency.
- D.** The Commission has authority to include in its order of abatement issued under subsection (C) a provision that a pool shall not add new members to the pool until the deficiency is abated.
- E.** Failure to comply with an order of abatement within 60 days after the order is issued constitutes cause for revocation of a pool's certificate of authority under R20-5-739.
- F.** A pool shall provide immediate written notice to the Commission of any bankruptcy filing by the pool.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-729. Arizona Office; Recordkeeping; Records Available for Review

- A.** A pool shall maintain an office in Arizona.
- B.** A pool shall ensure that all financial reports and minutes are signed by an authorized representative of the pool.
- C.** A pool shall make board meeting minutes, reports or other documents concerning payroll, audits, investments, experience rating, or other information concerning the pool available to the Commission upon request.
- D.** A pool shall retain records relating to the formation and operation of the pool. The pool's current board shall know the current location of the records.
- E.** Records of a pool are the property of the pool. If records of a pool are in the control or custody of a third party, the third party shall immediately surrender the records to a pool, upon request by the pool.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-730. Order for Additional Financial Information; Examination of Accounts and Records by Commission

If the Commission questions a pool's financial ability to pay workers' compensation claims under the Arizona Workers' Compensation Act and this Article, the Commission shall issue an order to the pool to provide the following information:

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tion Act, the Commission may order the pool to provide additional financial information from the pool's auditor or may order an independent financial examination of the pool.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-731. Assignment of Claims Under A.R.S. § 23-966; Obligation of Member to Reimburse the Commission

The Commission shall assign all workers' compensation claims of a pool to the State Compensation Fund under A.R.S. § 23-966 in the event that a pool files for bankruptcy or a pool is unable to process or pay benefits as required under the Arizona Workers' Compensation Act. In the event that the Commission assigns workers' compensation claims to the State Compensation Fund under A.R.S. § 23-966, the Commission shall have a right of reimbursement against any member of a pool for the amount paid by the State Compensation Fund for the member's claims and losses, including reasonable administrative costs, to the extent that such claims and losses are not covered by the pool's bonds or assets.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-732. Calculation and Payment of Taxes under A.R.S. § 23-961 and A.R.S. § 23-1065

A. Subject to subsection (B), the Commission shall determine the taxes to be paid under A.R.S. § 23-961(G) and A.R.S. § 23-1065(A) by calculating a pool's premiums using one of the following insurance plans selected by a pool:

1. Fixed premium plan:
 - a. A plan in which neither losses nor incurred loss reserves are used to calculate a premium;
 - b. A discount is allowed for premium size; and
 - c. The taxable premium is calculated as follows: Payroll x applicable rate - premium discount.
2. Guaranteed cost plan:
 - a. A plan that provides for a direct relationship, on an annual basis, of the premium for tax purposes and the experience modification rate developed to reflect the loss payments and incurred loss experience of an insured;
 - b. The taxable premium is calculated as follows: (Payroll x applicable rate x experience modification rate) - premium discount.
3. Retrospective plan:
 - a. A plan that provides for a relationship between the premium for tax purposes, the experience modification rate developed to reflect the loss payment and incurred loss experience of an insured, and the actual incurred losses for the tax year;
 - b. Plan is calculated annually and premium is not subject to further adjustment during the tax year;
 - c. The net taxable premium is calculated as follows: (payroll x applicable rate x experience modification rate x basic premium factor) + (losses for current year + adjusted losses for premium year x conversion factor) x tax multiplier; and
 - d. The net taxable premium is subject to a maximum and minimum premium level depending on which one of the four rating insurance option plans specified in the rating system filed by the rating organization is used by the State Compensation Fund under A.R.S. Title 20, Chapter 2, Article 4;

B. A pool shall not select a retrospective plan unless the pool meets the following criteria:

1. The pool has an annual net taxable premium exceeding \$100,000; and
2. The pool submits and calculates four years of data con-

cerning paid loss determinations and incurred loss reserved for each workers' compensation claim which information shall be used to calculate an experience modification factor for the pool. The oldest three years of data is used to calculate the rate and the current year data is used to calculate the tax.

- C. A pool shall submit to the Commission information required on the following forms no later than February 15 of each year:
 1. Self-insured Payroll Report, and
 2. Self-insured Injury Report.
- D. Payment of quarterly tax.
 1. The Commission shall calculate quarterly taxes owed under A.R.S. § 23-961(H) or A.R.S. § 23-1065(A) in one of the following ways:
 - a. 25% of the tax calculated for the previous year and adjusted for changes in the tax rate; or
 - b. Calculation based on actual payroll and premiums collected for each quarter.
 2. A pool shall file a completed and signed Self-insurers' Quarterly Tax Payment Form with each quarterly tax payment.
 3. Quarterly payments are due April 30, July 31, October 31, and January 31, for the periods ending March 31, June 31, September 30, and December 31, respectively.
 4. Quarterly tax payments may be adjusted because of changes in the annual tax rate.
- E. After receipt of the information required under A.R.S. § 23-961 and this Article, the Commission shall determine the annual taxes owed by a pool. The Commission shall also determine whether the pool has underpaid or overpaid the annual taxes required to be paid by the pool. If the quarterly tax payments paid by a pool are less than the actual tax calculated for the year, then the pool shall pay the difference on or before March 31 of the calendar year in which the taxes are due. If a pool has overpaid its annual taxes, then the Commission shall refund the amount as described in A.R.S. § 23-961(I). A pool shall pay to the Industrial Commission the pool's annual tax on or before March 31 based on premiums calculated for the preceding calendar year and adjusted for quarterly taxes previously paid.
- F. In addition to the penalty described under A.R.S. § 23-961(J), failure to pay annual or quarterly taxes as required is cause for revocation of a pool's certificate of authority.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-733. Review of Initial and Renewal Applications for Authority to Self-insure by the Division

A. Upon the filing of a completed initial or renewal application for authority to self-insure, the Division shall review the initial or renewal application to determine and verify whether the information contained in and submitted with the initial or renewal application for authorization to self-insure is complete and accurate. The Division shall also review the information provided to determine the following:

1. Whether the pool has met the requirements of A.R.S. § 23-961.01;
2. Whether the pool has met the requirements of this Article; and
3. Whether the pool has the ability to process and pay benefits required under the Arizona Workers' Compensation Act. A determination of a pool's financial ability to pay shall include a review of the ratios provided by each member at the time of an initial application and review of the following ratios for a pool at the time of renewal:
 - a. Total cash, receivables, and investments to total assets; and

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- b. Total revenue to total expenditures for loss fund and trustee fund.
- B.** The Division shall present the findings of its review described in subsection (A) to the Commission. The Division shall also present its recommendations to the Commission regarding an initial or renewal application.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-734. Decision by the Commission on Initial or Renewal Applications for Authority to Self-insure

- A.** The Commission shall consider the following before granting or denying an initial or renewal application to self-insure:
1. The information submitted by an applicant or pool,
 2. The information and recommendations of the Division, and
 3. The requirements of A.R.S. § 23-961.01 and this Article.
- B.** The Commission shall deny an application for authority to self-insure if the Commission finds one or more of the following conditions:
1. An applicant or pool does not meet the requirements of A.R.S. § 23-961.01,
 2. An applicant or pool does not meet the requirements of this Article, or
 3. An applicant or pool is unable to process and pay benefits required under the Arizona Workers' Compensation Act.
- C.** A decision of the Commission shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting. The Commission shall issue written findings and an order granting or denying authorization to self-insure.
- D.** The Division shall mail a copy of the Commission's written findings and order upon the applicant or pool within 10 days of the date the Commission issues its findings and order.
- E.** In the case of an initial application, an applicant shall substitute written confirmation from an authorized insurance carrier to provide fidelity coverage with evidence of fidelity insurance coverage as required under R20-5-712 no later than 10 days after the Commission grants authority to self-insure under this Section. The grant of authority to self-insure under this Section shall not become effective until the applicant provides evidence of actual fidelity coverage. The Commission shall deem an initial application withdrawn and the grant of authority to self-insure rescinded if an applicant fails to substitute written confirmation of fidelity coverage with evidence of fidelity coverage as required under this subsection.
- F.** In the case of an initial application, an applicant shall substitute written confirmation from an authorized insurance carrier to provide excess insurance coverage with evidence of excess insurance coverage as required under R20-5-715 no later than 10 days after the Commission grants authority to self-insure under this Section. The grant of authority to self-insure under this Section shall not become effective until the applicant provides evidence of actual excess insurance coverage. The Commission shall deem an initial application withdrawn and the grant of authority to self-insure rescinded if an applicant fails to substitute written confirmation of excess insurance coverage with evidence of excess insurance coverage as required under this subsection.
- G.** In the case of an initial application, an applicant shall deposit the guaranty bond, letter of credit, or other securities as required under R20-5-713 no later than 10 days after the Commission grants authority to self-insure under this Section. The grant of authority to self-insure under this Section shall not become effective until the applicant deposits the guaranty bond, letter of credit, or other security. The Commission shall deem an initial application withdrawn and the grant of author-

ity to self-insure rescinded if an applicant fails to deposit the guaranty bond, letter of credit, or other securities as required under this subsection.

- H.** Subject to subsections (E), (F), and (G), no later than 10 days after the Commission grants authorization to self-insure, the Division shall prepare a certificate of authority to self-insure and shall mail the certificate to the self-insured at the business address of the pool listed on the initial or renewal application.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-735. Right to Request a Hearing

- A.** An applicant or pool shall have 10 days from the date the Commission mails the findings and order under R20-5-734 to request a hearing.
- B.** A request for hearing shall comply with A.R.S. § 23-945 and be signed by an authorized representative of the applicant or pool or the applicant's or pool's legal representative. The applicant or pool shall file the request for hearing with the Division.
- C.** The Commission shall deem its findings and order final if a request for hearing is not received by the Division within the time specified in subsection (A).

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-736. Hearing Rights and Procedures

- A.** Burden of proof.
1. Except as provided in subsection (A)(2), in all proceedings arising out of this Article, the applicant or pool shall have the burden of proof to establish that it has met the requirements of A.R.S. § 23-901 et seq. and this Article.
 2. In a revocation hearing, the Commission shall have the burden of proof to establish that the self-insured has committed the acts described in R20-5-739.
- B.** Roles of Chair and Chief Counsel.
1. The Chair of the Commission or designee shall preside over hearings held under this Article. Except as otherwise provided in this Section, the Chair shall apply the provisions of A.R.S. § 41-1062 to hearings held under this Article and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.
 2. The Chief Counsel of the Commission shall represent the Commission in hearings held before the Commission and upon direction of the Chair of the Commission shall issue on behalf of the Commission all notices and subpoenas required under this Section. In the discretion of the Chief Counsel, the Chief Counsel may assign an attorney from the Legal Division of the Commission to represent the Division.
- C.** Appearance by a party.
1. Except as otherwise provided by law, the parties may appear on their own behalf or through counsel.
 2. When an attorney appears or intends to appear before the Commission, the attorney shall notify the Commission, in writing, of the attorney's name, address, and telephone number and the name and address of the person on whose behalf the attorney appears.
- D.** Filing and service.
1. For purposes of this Section, a document is considered filed when the Commission receives the document. All documents required to be filed in this Section with the Commission shall be served upon the Chief Counsel of the Industrial Commission and upon all parties to the proceeding.
 2. Except as otherwise provided in A.R.S. § 23-901, et seq. and this Article, service of all documents upon the Com-

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mission, applicant or pool shall be by personal service or by mail. Personal service includes delivery upon the Commission or party. Service by mail includes every type of service except personal service and is complete on mailing.

- E. Notice of hearing.**
1. The Commission shall give the parties at least 20 days notice of hearing.
 2. A notice of hearing shall be in writing and mailed to the last known address of the applicant or pool as shown on the record of the Commission or upon the applicant's or pool's representative if a notice of appearance has been filed by a representative.
 3. A notice of hearing shall comply with the requirements in A.R.S. § 41-1061(B).
- F. Evidence.**
1. The civil rules of evidence do not apply to hearings held under this Section.
 2. A party may make an opening and closing statement with the permission of the Chair if the Chair determines that the statement will be helpful to a determination of the issues.
 3. All witnesses at a hearing shall testify under oath or affirmation.
 4. A party may present evidence and conduct cross-examination of witnesses.
 5. Documentary evidence may be received into evidence and shall be filed no later than 15 days before the date of the hearing. Upon request or upon direction from the chair of the Commission, the Commission may issue a subpoena to the author of any document submitted into evidence to appear and testify at the hearing.
 6. Upon written request by a party or upon direction from the Chair of the Commission, the Commission may issue a subpoena requiring the attendance and testimony of a witness whose testimony is material. A subpoena shall be requested no later than 10 days before the date of the hearing.
 7. Upon written request by a party or upon direction from the Chair of the Commission, the Commission may issue a subpoena duces tecum requiring the production of documents or other tangible evidence. The written request by a party shall contain a statement explaining the general relevance, materiality, and reasonable particularity of the documentary or other tangible evidence and the facts to be proven by them.
- G. Transcript of Proceedings.** Hearings before the Commission shall be stenographically reported or mechanically recorded. Any party desiring a copy of the transcript shall obtain a copy from the court reporter.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-737. Decision Upon Hearing by Commission

- A.** A decision of the Commission to deny an initial or renewal application shall be based upon the grounds in R20-5-734(B) and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- B.** A decision of the Commission to revoke authority to self-insure shall be based upon the grounds in R20-5-739 and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- C.** A decision of the Commission to deny admission of an employer into a pool or deny authorization to add members without Commission approval shall be based upon the grounds

in R20-5-721 and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.

- D.** After a decision is rendered at a public meeting, the Commission shall issue a written decision upon hearing which shall include findings of fact and conclusions of law, separately stated.
- E.** A Commission decision is final unless an applicant or pool requests review under R20-5-738 no later than 15 days after the written decision is mailed to the parties.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-738. Request for Review

- A.** A party may request review of a Commission decision issued under R20-5-737 by filing with the Commission a written request for review no later than 15 days after the written decision is mailed to the parties.
- B.** A request for review shall be based upon one or more of the following grounds which have materially affected the rights of a party:
1. Irregularities in the hearing proceedings or any order or abuse of discretion that deprives a party seeking review of a fair hearing;
 2. Accident or surprise which could not have been prevented by ordinary prudence;
 3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
 4. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of, the hearing;
 5. Bias or prejudice of the Division or Commission; and
 6. The order, decision, or findings of fact are not justified by the evidence or are contrary to law.
- C.** A request for review shall state the specific facts and law in support of the request and shall specify the relief sought by the request.
- D.** The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.
- E.** The Commission's decision upon review is final unless an applicant or pool seeks judicial review as provided in A.R.S. § 23-946.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-739. Revocation of Authority to Self-insure

- A.** In addition to those specific grounds set forth in this Article, the following constitute grounds for revocation of authority to self-insure for workers' compensation:
1. Failure to comply with requirements of this Article or applicable requirements of 20 A.A.C. 5, Article 1;
 2. Failure to comply with applicable requirements of A.R.S. § 23-901 et seq.;
 3. Unless otherwise provided, failure to comply with an order or award of the Commission within 30 days after the order or award becomes final;
 4. An inability to process and pay claims under the Arizona Workers' Compensation Act;
 5. The failure of a pool to provide the Commission the reports and taxes required under this Article; and
 6. The willful misstatement of any material fact in an application, report, or statement made to the Commission.
- B.** Upon receipt of information demonstrating that a pool has committed an act described in subsection (A), the Division shall conduct an investigation of the facts of the alleged misconduct. If, upon completion of the investigation, the Division determines that sufficient evidence exists to warrant revoca-

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tion of a pool's authority to self-insure, then the Division shall present it findings to the Commission.

- C. The Commission shall consider the findings and recommendation of the Division before revoking a pool's authority to self-insure.
- D. The Commission shall revoke a pool's authority to self-insure if the Commission finds one or more of the grounds set forth in subsection (A). The Commission shall issue written findings and an order revoking the authority to self-insure and shall serve a copy of the findings and order upon the pool.
- E. A pool shall have 10 days from the date the Commission serves the findings and order described in subsection (D) to request a hearing. The request for hearing shall comply with the requirements of A.R.S. § 23-945.
- F. R20-5-736, R20-5-737, and R20-5-738 govern hearing rights and procedures for revocation hearings.
- G. A pool shall immediately inform each of its members, in writing, of the Commission's order of revocation.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

**ARTICLE 8. OCCUPATIONAL SAFETY AND HEALTH
RULES OF PROCEDURE BEFORE THE INDUSTRIAL
COMMISSION OF ARIZONA**

R20-5-801. Notice of Rules

Sections R20-5-801 et seq. apply to all actions and proceedings of or before the Commission and Review Board pertaining to those issues arising out of Title 23, Chapter 2, Article 10.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-801 recodified from R4-13-801 (Supp. 95-1).

R20-5-802. Location of Office and Office Hours

The main office of the Industrial Commission of Arizona is located in Phoenix, Arizona. An office is also located in Tucson, Arizona. The offices are open for the transaction of business from 8:00 a.m. until 5:00 p.m. every day except Saturdays, Sundays and legal holidays.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-802 recodified from R4-13-802 (Supp. 95-1).

R20-5-803. Definitions

In these Rules of Procedures, unless the context otherwise requires, the following words and terms shall have the following meanings:

1. "Commission" means the Industrial Commission of Arizona.
2. "Affected employee" means an employee of a cited employer who is exposed to the alleged hazard described in the citation, as a result of his assigned duties.
3. "Authorized employee representative" means a labor organization which has a collective bargaining relationship with the cited employer and which represents affected employees.
4. "Representative" means any person, including an authorized employee representative, authorized by a party to represent him in a proceeding.
5. "Citation" means a written communication issued by the Division of Occupational Safety and Health of the Industrial Commission of Arizona pursuant to A.R.S. § 23-415.
6. "Notification of proposed penalty" means a written communication issued by the Industrial Commission of Arizona pursuant to A.R.S. § 23-418.
7. "Party" means the Occupational Safety and Health Division of the Commission, the affected employer and affected employees.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-803 recodified from R4-13-803 (Supp. 95-1).

R20-5-804. Computation of Time

In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-804 recodified from R4-13-804 (Supp. 95-1).

R20-5-805. Record Address

The initial pleading filed by any person shall contain his name, address and telephone number. Any change in such information must be communicated promptly in writing to the Commission and to all other parties. A party who fails to furnish such correct and current information shall be deemed to have waived his right to object to the validity of any notice and/or service which has been made to the last known address of the party as shown by the records of the Commission.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-805 recodified from R4-13-805 (Supp. 95-1).

R20-5-806. Service and Notice

- A. At the time of filing pleadings or other documents a copy thereof shall be served by the filing party on every other party.
- B. Service upon a party who has appeared through a representative shall be made only upon such representative.
- C. Unless otherwise herein indicated, service may be accomplished by postage prepaid first class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).
- D. Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.
- E. Service and notice to employees represented by an authorized employee representative shall be deemed accomplished by serving the representative in the manner prescribed in subsection (C).
- F. In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of Notice of the Date of Hearing, post, where the citation is required to be posted, a copy of the Notice of Date of Hearing and a notice informing such affected employees of their right to appear at the hearing and state their position and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this subsection:
(Name of employer)

Your employer has been cited by the Industrial Commission of Arizona for violation of the Arizona Occupational Safety and Health Act of 1972. The citation has been contested and will be the subject of a hearing before the Industrial Commission. Affected employees are entitled to appear in this hearing under the terms and conditions established by the Industrial Commission in its Rules of Procedure. Notice of Intent to Participate should be sent to:

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amended by final rulemaking at 12 A.A.R. 1416, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking 27 A.A.R. 515, effective May 14, 2021 (Supp. 21-1).

R20-5-1009. Service of Determinations, Notices, and Other Documents

- A. A determination, notice, or other document required by this Article or other law to be served upon a party, shall be made upon the party, or, if represented by legal counsel, the party's legal counsel. Service upon legal counsel is considered service upon the party.
- B. Service may be made and is deemed complete by:
1. Depositing the document in regular or certified mail, addressed to the party served at the address shown in the records of the Department, or by personal delivery upon the party.
 2. With a party's consent, transmission by e-mail to the e-mail address shown in the records of the Department.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1416, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking 27 A.A.R. 515, effective May 14, 2021 (Supp. 21-1).

ARTICLE 11. SELF-INSURANCE FOR INDIVIDUAL EMPLOYERS**R20-5-1101. Definitions**

In addition to the definitions provided in A.R.S. § 23-901, the following definitions apply to this Article:

"Act" means the Arizona Workers' Compensation Act, A.R.S. § 23-901 et seq.

"Affiliate" or "affiliate relationship" means a person or entity that has the power to control, directly or indirectly, through one or more intermediaries, another person or entity.

"Anniversary date" means the date beginning one year from the initial effective date of the Authorization to Self-insure.

"Applicant" means an individual employer filing an initial application for authority to self-insure under A.R.S. § 23-961.

"Authorized signature" means the signature of an officer of the self-insurer.

"Cash-flow ratio" means a numerical relationship that reflects an ability to meet current financial obligations out of cash flow and is calculated by dividing funds provided by operations of a business by current liabilities.

"Chief counsel" means the chief counsel for the Industrial Commission of Arizona.

"Claim" means a worker's compensation claim.

"Claims Division," means the Claims Division of the Industrial Commission of Arizona.

"Classification code" means a number assigned by an approved rating organization that classifies employees by type of job performed.

"Control" means the possession, direct or indirect, of power to direct or cause the direction of, the management and policies of a person or entity, whether through the ownership of voting securities, by contract, or otherwise.

"Current ratio" means a numerical relationship that reflects an ability to pay current obligations and is calculated by dividing current assets by current liabilities.

"Debt-status ratio" means a numerical relationship that reflects the proportion of funds supplied internally relative to the funds contributed by creditors and is calculated by dividing net worth by total liabilities.

"Division" means the Accounting Division of the Industrial Commission of Arizona.

"Ex-medical plan" means a method of determining the premium upon which taxes are calculated that provides for rate revisions based upon the self-insurer operating a medical facility with a program for providing medical, surgical, or hospital services to a majority of the self-insurer's employees and that complies with the requirements of A.R.S. § 23-1070. Neither losses nor incurred loss reserves are used in this plan.

"Excess insurance carrier" means an insurance carrier authorized to issue policies of excess insurance coverage to a self-insured employer.

"Experience modification rate" means a ratio comparing actual losses to expected losses based on a formula determined by an approved rating organization and which includes three years of loss information.

"Fixed premium plan" means a method of determining the premium upon which taxes are calculated in which neither losses nor incurred loss reserves are used for calculation. The only discount is for premium size.

"Fully-funded risk management fund" means a fund that maintains a positive equity balance that is sufficient to cover all of the fund's actuarial losses.

"Guaranteed cost plan" means a method of determining the premium upon which taxes are calculated that provides for a direct relationship, on an annual basis, of the premium for tax purposes and the experience modification rate developed to reflect the loss payment and incurred loss experience of the self-insured employer.

"Individual employer" means an employer under the Act that is applying for authority to self-insure, or is approved to self-insure, that is not an entity described in A.R.S. § 23-961.01; § 11-952.01; or § 41-621.01.

"Parent company" means one that owns sufficient stock in a subsidiary company to have voting control of the subsidiary company, as "control" is defined in this Article.

"Profitability ratio" means a numerical relationship that represents the return on assets and the efficiency of assets and is calculated by dividing profit before taxes by total assets, multiplied by 100 expressed as a percentage.

"Public entity" means an individual employer that is a state, county, municipality, school district, or any other entity with taxing authority.

"Quick ratio" means a numerical relationship that represents the degree to which liabilities are covered by the most liquid current assets and is calculated by dividing cash and equivalents, plus receivables, by current liabilities.

"Rating organization," means an entity that meets the requirements of A.R.S. § 20-363, and is approved by the Arizona Department of Insurance to establish rates, codes, and formulas used to calculate worker compensation premiums.

"Resolution of Authorization" means a document issued by the Commission that grants authority to self-insure for purposes of workers' compensation.

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“Retrospective rating plan” means a method of determining the premium upon which taxes are calculated that provides for the relationship between the premium for tax purposes, the experience modification rate developed to reflect the loss payment and incurred loss experience of the self-insured employer, and the actual incurred losses for the tax year.

“Securities” or “security” means a guaranty bond, a bond of the United States or its agencies, United States’ Treasury Notes, a letter of credit, or Local Government Investment Pool (LGIP) funds, or appropriate documents renewing or continuing any of these.

“Self-insurer” or “self-insured” means an individual employer that the Commission authorizes to self-insure for workers’ compensation insurance under A.R.S. § 23-961.

“Working capital ratio” means a numerical relationship that measures the sufficiency of working capital to support sales and is calculated by dividing working capital by sales. Working capital is calculated by subtracting current liabilities from current assets.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1102. Computation of Time

- A.** In computing any period of time prescribed or allowed by this Article, the day of the act or event from which the designated period of time begins to run is not included. The last day of the period computed is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays are excluded in the computation.
- B.** Except as otherwise provided by law, the Division may extend time limits prescribed by this Article for good cause. Any request for an extension of a time limit shall be submitted to the Division in writing at least 10 days before the expiration of the time limit for which an extension is sought.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1103. Forms

The following forms are available upon request from the Division or from the Commission’s Internet site at www.ica.state.az.us, and include the following information for each:

- A.** Initial application for authority to self-insure:
1. Legal name of the applicant and requested effective date for authority to self-insure;
 2. Mailing address and telephone number of applicant’s principal Arizona office and home office;
 3. Name of state under which applicant is incorporated, if applicant is a corporation;
 4. Name of parent company, if applicant is a subsidiary;
 5. Name, address, and status of partners (general, special, and limited), if applicant is a partnership;
 6. Length of time in business in Arizona and elsewhere, if applicable;
 7. Nature or type of business in Arizona;
 8. Arizona payroll data;
 9. Current workers’ compensation insurance data, including current expiration date;
 10. Statement of reasons for rejection or cancellation if an application for worker’s compensation insurance submitted by applicant has ever been rejected or a policy of

workers’ compensation insurance held by the applicant has ever been cancelled;

11. Listing of states where self-insurance was denied, if any, and where the applicant is currently self-insured;
 12. Arizona claims history and data for three years preceding application date;
 13. Arizona loss history and experience modification rates for three years preceding application date;
 14. Name of excess insurance carrier;
 15. Name, address, and telephone number of third-party administrator or individual responsible for processing Arizona workers’ compensation claims;
 16. Name and address of Arizona agent upon whom legal notice may be served;
 17. Selection of tax plan;
 18. Name, address, telephone and facsimile number, and e-mail address of person responsible for completing the premium tax information;
 19. Name, address, and telephone number of claims office where Arizona workers’ compensation claims will be processed;
 20. Name, address, telephone and facsimile number, and e-mail address of the primary and secondary points of contact for the application and self-insurance process;
 21. Statement that all information and assertions contained in the application and the documents accompanying the application are factually correct and true; and
 22. Listing of required attachments.
- B.** Workers’ compensation liability form:
1. Name of self-insurer;
 2. Selection and calculation of required securities and excess insurance, which includes calculation and reporting the following:
 - a. For all claims reported in the current calendar year, the number of open claims, total incurred liability, both medical and compensation, less the amount paid on these claims to equal the remaining liability or amount owing on these claims;
 - b. For all open claims incurred in prior years and remaining open in the current year, the number of open claims, the total incurred liability, both medical and compensation, less the amount paid on these claims to equal the remaining liability or amount owing on these claims;
 - c. The total remaining liability on all open claims less any reimbursement for excess insurance ceded to equal the net remaining liability owing on all claims; and
 - d. The amount calculated in subsection (B)(2)(c) multiplied by 125%;
 3. Name of excess insurance carrier that provides reimbursement to self-insurer; and
 4. A statement by the Chief Financial Officer or Chief Executive Officer attesting to the truthfulness of the information contained in the Workers’ Compensation Liability Form;
- C.** Self-insurance workers’ compensation guaranty bond:
1. Name of self-insurer;
 2. Name of the surety insurance company;
 3. Description of the bond, bond number, amount, and conditions of obligation;
 4. Statement regarding the responsibility for fees and costs associated with the collection of the bond and the responsibility for payment of any award or judgment against the surety; and
 5. Request for authorized signatures and titles of self-insurer, surety, and agent or attorney-in-fact, and a nota-

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- rized power of attorney, and date of signing.
- D.** Parent company guaranty:
1. Name and state of incorporation of parent company;
 2. Name of self-insured subsidiary to be included in the guaranty;
 3. Statement that the parent company will assume the workers' compensation liabilities of the subsidiary if the subsidiary is unable to honor these liabilities, which guarantee is for the benefit of and may be enforced by any and all employees of subsidiary; and
 4. Corporate seal.
- E.** Self-insured payroll report:
1. Name of self-insured;
 2. Tax plan selection;
 3. Period covered by report;
 4. Payroll description (classification codes, methods, and types of pay);
 5. Amount paid for period covered by the report;
 6. Statement that all information contained in the report is correct; and
 7. Request for authorized signature, date, title, and telephone number of person signing the form.
- F.** Self-insured medical report:
1. Name of self-insured;
 2. Period covered by report;
 3. Amount paid relating to treatment of industrial injuries, including payment of medical personnel employed by the self-insurer and medical providers providing outside services;
 4. Compensation paid to worker's compensation claimants;
 5. Insurance premiums paid;
 6. Total expenditures for workers' compensation and occupational disease claims;
 7. Statement that all information contained in the report is correct; and
 8. Request for authorized signature, date, title, and telephone number of person signing the form.
- G.** Self-insured hospital report:
1. Name of self-insurer;
 2. Period covered by report;
 3. Amount paid for operational expenses, including payroll, employee benefits, surgeon and physician fees, pharmacy costs, miscellaneous supplies and services, utilities, depreciation, licenses, and taxes;
 4. Amount of revenue, including charges for inpatient and outpatient care, miscellaneous revenue, employee-paid premiums, and employer-paid premiums;
 5. Reconciliation of cash account, including cash balance, total cash available, investments, operating expenses, disbursements, and net cash balance;
 6. Statement that all information contained in the report is correct; and
 7. Request for authorized signature, date, title, and telephone number of person signing the form.
- H.** Self-insured injury report:
1. Name of self-insurer;
 2. Period covered by report;
 3. Description of individual claims for the current year and three preceding years requiring payment greater than \$5,000.00 for each claim, including name of claimant, date of injury, nature of injury, accumulated amount paid, and the amount of any expenses incurred but not paid;
 4. The total amount paid, and the amount of any expenses incurred but not paid, for the current year and three preceding years for all claims requiring a total payment less than \$5,000.00 for each claim;
 5. Statement that all information contained in the report is correct; and
6. Request for authorized signature, date, title, and telephone number of person signing the form.
- I.** Quarterly tax payment:
1. Name and address of the self-insurer;
 2. Designation of the applicable quarter;
 3. Amount of annual tax paid in the previous calendar year; amount of the quarterly tax paid adjusted for any change in the tax rate for the applicable quarter;
 4. Statement that all information contained in the form is correct; and
 5. Request for authorized signature, date, title, and telephone number of person signing the form.
- J.** Notice of self-insurer's termination of self-insurance:
1. Name, address, and telephone number of self-insurer and all Arizona subsidiaries covered under the authority to self-insure, including if applicable:
 - a. Names and addresses of all Arizona operations or locations covered by self-insurance authority;
 - b. Names and addresses of all partners, if self-insurer is a partnership; and
 - c. Current and former names of self-insurer if the self-insurer has undergone a name change since the most recent effective date of the authority to self-insure;
 2. Effective date of termination of authority to self-insure;
 3. Name and address of workers' compensation insurance carrier providing coverage after the effective date of termination;
 4. For the new coverage; effective date of workers' compensation coverage;
 5. Statement that all information contained in the form is correct; and
 6. Request for authorized signature, date, title, and telephone number of person signing the form.
- K.** Self-provider of medical benefits:
1. Indication of whether the self-insurer is, or is not, directing medical care for all of its employees;
 2. If the self-insurer is directing medical care for its employees, the self-insurer shall:
 - (a) Attach a copy of all contracts between the self-insurer and the medical providers; or
 - (b) Submit a list of names and addresses of all medical providers with whom the self-insurer contracts; and
 - (c) The effective date of the agreements between the employer and medical provider; and
 3. Authorized signature, date, and title of person signing the form.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1104. Commission Approval to Act as Self-insurer

An employer does not have authority to act as a self-insurer under A.R.S. § 23-961 unless:

1. The Commission authorizes the employer to be self-insured; and
2. Except as provided in R20-5-1114, the employer posts security in an amount as required under this Article.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1105. Resolution of Authorization

The Commission shall issue a Resolution of Authorization to an applicant that meets the requirements of this Article. The Commission shall annually review and renew a Resolution of Authorization to self-insure. The authority to self-insure is valid and continues in

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effect until the Commission takes action under this Article or the self-insured terminates its authorization to self-insure under R20-5-1136.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1106. Time-frames

- A. Administrative completeness review.**
1. Initial application.
 - a. The Division shall review an initial application for authority to self-insure within 20 days of receipt of the application to determine whether the application contains the information required by A.R.S. § 23-961 and this Article.
 - b. The Division shall inform the applicant by written notice if the application is incomplete. The Division shall include in its written notice to the applicant, a list of the missing information necessary to comply with this Article.
 - c. The Division shall deem the application withdrawn if the applicant fails to post security as required under this Article or fails to file a completed application within 10 days of being notified by the Division that the application is incomplete, unless the applicant obtains an extension to provide the missing information under subsection (D).
 2. Request for renewal.
 - a. The Division shall review a request for renewal within 10 days of receipt of the request to determine whether the request contains the information in A.R.S. § 23-961 and this Article.
 - b. The Division shall inform a self-insurer by written notice if the request for renewal is incomplete. The Division shall include in its written notice to the self-insurer, a list of the missing information necessary to comply with this Article, and the right to request an extension under subsection (D).
- B. Substantive review.**
1. Initial application. Within 70 days after the Division determines an initial application complete, the Commission shall determine whether the initial application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall issue either a Resolution of Authorization granting authority to self-insure, or an order denying authority to self-insure.
 2. Request for renewal. Within 60 days after the Division receives all the required information under this Article, the Commission shall determine whether a request for renewal for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall renew the self-insurer's authority to self-insure, or issue an order denying or revoking authority to self-insure.
- C. Overall time-frame.**
1. Initial application. The overall time-frame is 90 days, unless extended under A.R.S. § 41-1072 et seq.
 2. Request for renewal. The overall time-frame is 70 days, unless extended under A.R.S. § 41-1072 et seq.
- D. If an applicant or self-insurer cannot timely submit to the Division information to complete an initial application or a request for renewal, the applicant or self-insurer may obtain an extension to submit the missing information by filing a written request with the Division. The written request for extension shall be filed no later than 10 days after receipt of the deficiency notice from the Division. The written request for an extension shall state the reasons the applicant or self-insurer is unable to meet the deadline. If an extension will enable the**

applicant or self-insurer to assemble and submit the missing information, the Division shall grant an extension of not more than 30 days and provide written notice of the extension to the applicant or self-insurer.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1107. Initial Application under A.R.S. § 23-961

- A.** A public entity may file an initial application for authority to self-insure under A.R.S. § 23-961 if the public entity:
1. Provides an annual payroll in Arizona of at least \$2,000,000; and
 2. Has total assets of at least \$50,000,000.
- B.** An individual employer that is not a public entity may file an initial application for authority to self-insure under A.R.S. § 23-961 if the employer:
1. Is engaged in business in Arizona and has been for at least five years before the date of the initial application;
 2. Provides an annual payroll in Arizona of at least \$2,000,000, including the combined payrolls of all subsidiary companies that will be under the self-insurance authorization;
 3. Meets either of the following thresholds:
 - a. Has assets of at least \$50,000,000; or
 - b. Has \$10,000,000 in net worth and a cash flow ratio of at least .25.
- C.** The applicant for authority to self-insure shall complete and file with the Division a typewritten application form approved by the Division. An application is considered filed when it is received at the Division.
- D.** The authorized representative of the applicant shall sign and date the initial application.
- E.** The authorized representative signing the initial application shall verify, in writing, that the information submitted with the application is correct.
- F.** The Division shall deem an initial application for authority to self-insure complete if an applicant that is not a subsidiary company provides the following information with the initial application:
1. A statement from the board of directors or governing body:
 - a. Authorizing the filing of the application, and
 - b. Designating the person given authority to sign the application on behalf of the applicant;
 2. A statement classifying the applicant's Arizona employees using the workers' compensation classification codes of the approved rating organization used by the Arizona State Compensation Fund;
 3. A copy of the applicable hospital or medical agreement or a detailed statement of the arrangements between the employer and the medical provider, if medical care is directed under A.R.S. § 23-1070;
 4. If the applicant is not a public entity, a copy of the applicant's audited financial statements or internally-reviewed and signed financial statements for the most current and prior two fiscal years, including any notes to the financial statements;
 5. If the applicant is a public entity, a copy of the applicant's audited financial statement for the most current and prior fiscal year; and
 6. If the applicant is a public entity that qualifies for exemption under R20-5-1114(A), the certified statement required under R20-5-1114(B).
- G.** The Division shall deem an initial application for authority to self-insure complete if an applicant that is a subsidiary com-

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pany provides the following information with the initial application:

1. The information required in Section (F);
2. A completed Parent Company Guaranty form signed by the authorized representative of the subsidiary's parent company;
3. A certified copy of the resolution of the parent company's board of directors authorizing a designated officer to complete, sign, and file the Parent Company Guaranty form; and
4. A copy of the parent company's audited financial statements for the most current and prior two fiscal years, including any notes to the financial statements.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1108. Self-insurance Renewal

- A. A self-insurer that is required to post security under this Article shall request renewal of authorization to self-insure with the Division 30 days before the self-insurer's anniversary date, by filing a Workers' Compensation Liability form. The Commission shall deem the request for renewal complete if the self-insurer provides the following:
1. A copy of the self-insurer's most recent audited annual financial statement or internally reviewed and signed financial statement or annual report. A parent company shall submit a copy of its most recent audited annual financial statement or annual report;
 2. If the self-insured company is a subsidiary, a completed Parent Company Guaranty form signed and dated by the authorized representative of the parent company, or if the parent company of the subsidiary is different from the last filing approved by the Commission, a certified copy of the parent company board of director's resolution authorizing a designated officer to complete, sign, and file the Parent Company Guaranty form;
 3. Per claim data to support the summary information on the Workers' Compensation Liability form. The self-insurer shall provide this information in the same format as in R20-5-1103(B)(2)(a) and (b);
 4. Deposit of security as shown on the completed Worker's Compensation Liability form no later than the self-insurer's anniversary date subject to R20-5-1127 and R20-5-1128;
 5. A certificate of excess insurance or a continuing certificate of existing excess insurance if the self-insurer takes a credit for excess insurance under R20-5-1109;
 6. If medical care is directed under A.R.S. § 23-1070, a copy of the current medical or hospital medical agreement, or detailed statement of the arrangements, if not previously provided;
 7. A statement of the total number of full-time and part-time Arizona employees;
 8. If the Division determines that the self-insurer's denial rate exceeds 12% of claims filed, a statement from the self-insurer identifying the reason for each denial of a workers' compensation claim;
 9. If the Division determines that the self-insurer's experience modification rate is greater than 1.10, a statement from the self-insurer identifying the reasons for that level of losses;
 10. Name of the third-party administrator;
 11. Principal location of the self-insurer in Arizona;
 12. A description of the self-insurer's current business in Arizona and a description of any changes in the nature of business in Arizona in the past year;

13. List of any subsidiary company located in Arizona; and
14. Primary and secondary points of contact, including addresses, telephone numbers, facsimile numbers, and e-mail information.

- B. A self-insurer that is exempt from the requirement to post security, shall request renewal of authorization to self-insure by filing an annual statement described under R20-5-1114(B) no later than the employer's anniversary date. The Commission shall deem the request for renewal complete if the self-insurer provides the following:
1. Information required under subsections (A)(1), (A)(7) through (A)(10) and (A)(14); and
 2. A certified statement that contains the information described in R20-5-1114 (A) and (B).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1109. Security Deposit; Excess Insurance Policy

- A. Except as provided in R20-5-1114, an applicant authorized to self-insure under this Article shall post security in the amount of at least \$100,000.00 under A.R.S. § 23-961. The self-insurer shall not reduce or offset this minimum amount by any credit for excess insurance.
- B. Except as provided in R20-5-1114, and subject to the minimum security requirement of A.R.S. § 23-961, a self-insurer filing a request to renew its authority to self-insure under R20-5-1108 shall post security in an amount equal to 125% of its total estimated future liability, or in an amount determined by the Division under R20-5-1127.
- C. Subject to review by the Commission, the self-insurer shall determine its total estimated liability by using the Workers' Compensation Liability form.
- D. The Commission shall approve a credit for excess insurance against the amount of security required under this Article only if the following criteria are met:
1. The self-insurer satisfies the minimum-security requirement of A.R.S. § 23-961,
 2. The self-insurer does not reduce or offset the minimum-security amount by an excess insurance,
 3. The self-insurer calculates the credit on the Workers' Compensation Liability form,
 4. The excess insurance policy contains a 60-day notice of termination,
 5. The excess insurer does not have an affiliate relationship with the self-insurer,
 6. The excess insurance policy provides that the insolvency of the self-insurer does not relieve the excess insurer of liability under the policy, and
 7. The excess insurer posts a deposit under A.R.S. § 23-961(D).
- E. If an excess insurance provider gives the self-insurer notice of its intent to terminate the policy, the self-insurer shall immediately:
1. Provide written notice of the notice of termination to the Division, and
 2. Deposit security as shown on the Worker's Compensation Liability form without credit for the excess insurance.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1110. Posting of Guaranty Bond; Bond Amount; Effective Date

- A. A self-insurer shall ensure that a guaranty bond or rider for the guaranty bond filed with the Division bears the same effective

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date as the effective date of the Resolution of Authorization to self-insure.

- B.** The Commission shall permit the self-insurer to post a guaranty bond or rider of the guaranty bond instead of other security if:
1. The insurance carrier providing the guaranty bond or rider submits the bond or rider to the Division on a form approved for use by the Division;
 2. The guaranty bond is continuous in form;
 3. The penal sum of the guaranty bond or rider equals the amount the self-insured must post as security under this Article;
 4. The company issuing the guaranty bond or rider is authorized and licensed to transact the business of surety insurance in Arizona;
 5. An authorized agent of the surety executes the guaranty bond or rider;
 6. The bond is signed and dated by an authorized representative of the self-insurer;
 7. The surety issuing the bond or rider does not have an affiliate relationship with the applicant or self-insurer; and
 8. The surety issuing the guaranty bond or rider has a rating with A.M. Best of at least A-.
- C.** A guaranty bond or rider is subject to annual change based on unpaid liabilities as reported by the self-insurer on the Workers' Compensation Liability form.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1111. Posting of Other Bonds or Treasury Notes of the United States Instead of Guaranty Bond; Registration; Deposit

- A.** Instead of providing a guaranty bond under R20-5-1110, a self-insurer may deposit with the Commission for transmittal through the Arizona State Treasurer to the Treasurer's designated bank, bonds or treasury notes of the United States of America if the bonds or treasury notes are guaranteed as to principal and interest by the United States of America or by any agency or instrumentality of the United States of America.
- B.** The self-insurer shall ensure that bonds or treasury notes of the United States of America deposited with Commission under this subsection are registered to: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws." The self-insured shall ensure that any contract between the self-insured and the custodial bank provides that the bonds or treasury notes are held for: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws."
- C.** If one or more of the self-insurer's claims are assigned to the state compensation fund under A.R.S. § 23-966, the Commission shall:
1. Collect or order collection of the principal, or market value of the security, whichever is greater, as it becomes due;
 2. Sell or order the sale of the security or any part of the security; or
 3. Apply or order the application of the proceeds to the payment of any unpaid obligations of the self-insurer, as determined by the Commission, in the event of the default in the payment of its obligations.
- D.** The self-insurer may arrange for interest on bonds or treasury notes of the United States of America deposited under this subsection to be paid to the self-insurer.

- E.** Bonds or treasury notes deposited according to this Article by a self-insurer shall be in an amount not less than the security deposit amount required under R20-5-1109.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1112. Letter of Credit or Local Government Investment Pool Funds (LGIP)

- A.** Letter of Credit:
1. A self-insurer may satisfy the provision of R20-5-1110 by filing a letter of credit.
 2. The self-insurer shall ensure that the letter of credit is registered to: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws."
 3. The self-insurer shall ensure that the letter of credit is issued by a federal or Arizona chartered bank with an Arizona branch office or correspondent bank in Arizona upon which demand may be made and from which funds will be immediately payable on demand.
 4. The letter of credit is acceptable only if:
 - a. The letter includes the name and address of the self-insurer, including all Arizona subsidiaries;
 - b. Is for a period of one year from the effective date;
 - c. Includes a provision that the letter of credit automatically extends for consecutive periods of one year, unless the issuing bank provides written notice to the Division 30 days before the expiration of any one-year term that the issuing bank will not renew the letter of credit for the additional period;
 - d. Includes a provision that the written notice required in subsection (A)(4)(d) may be delivered to the Division or sent to the Division by United States Mail, certified mail return receipt requested;
 - e. The letter of credit states the amount available under the letter of credit; and
 - f. The self-insurer ensures that the letter of credit includes a statement that the sum available under the letter of credit shall be paid to the Industrial Commission of Arizona upon receipt by the issuing bank of a signed statement by an official of the Commission stating the following:
 - i. The self-insurer has failed to comply with its workers' compensation obligations; or
 - ii. The self-insurer has failed to renew or substitute acceptable security for its workers' compensation liability 15 days before the expiration of the letter of credit.
- B.** Local Government Investment Pool Funds (LGIP):
1. Instead of posting a guaranty bond, letter of credit, or United States of America bonds or Treasury Notes, a self-insured public agency may post a local government investment pool (LGIP) fund only if:
 - a. The self-insurer ensures that the funds are deposited through the Arizona State Treasurer as custodian subject to the order of, and in trust for, the Industrial Commission of Arizona, registered and assigned to: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws;"
 - b. The LGIP funds posted as security in compliance with this Section are in an amount not less than the security deposit amount required under R20-5-1109;
 - c. The Commission has the ability to:
 - i. Collect or order collection of the funds; and

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- ii. Apply or order the application of the funds to the payment of any award rendered against the self-insurer, as determined by the Commission, if the self-insurer defaults in any of its obligations;
 - d. The self-insurer submits an assignment for the benefit of the Industrial Commission of Arizona, and an Endorsement-Receipt for Notice of Assignment, signed by the State of Arizona Treasurer and notarized. The Endorsement-Receipt shall contain the following language: Receipt is hereby acknowledged by the Treasurer of the State of Arizona of written notice of the assignment to the Industrial Commission ("Commission") of the above-identified account. We have noted our records to show the interest of the Commission in said account as shown in and by the above assignment. We have retained a copy of this document. We hereby certify that we have not received any notice of lien, encumbrance, hold, claim, or other obligation against the above-identified account prior to its assignment to the Commission. We further hereby waive any current or future right of set-off against such account. We agree to make payment as required by the Rules and Regulations of the Commission adopted in accordance with applicable laws and the law applicable to this institution.
2. Interest on the funds deposited under this Section may be remitted by the State of Arizona Treasurer directly to the self-insurer.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1113. Substitution of Securities

The Commission may authorize the return a self-insurer's security deposit with written approval from the Division. The Commission shall not authorize the return or release of security unless the self-insurer substitutes the security with new security in an amount sufficient to satisfy the self-insurer's obligations under R20-5-1109.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1114. Exemption from Requirement to Post Security

- A. Conditions to qualify for exemption. A public entity applicant or public entity self-insurer is exempt from the requirements under this Article to post or provide security if the public entity:
 - 1. Has a fully-funded risk management fund sufficient to cover actuarial liabilities for workers' compensation as determined by the self-insurer in accordance with Government Accounting Standards Board Statement #10; and
 - 2. Provides funding to the risk management fund each year sufficient to cover actuarial liabilities for workers' compensation as determined by the self-insurer in accordance with Government Accounting Standards Board Statement #10.
- B. Written request for exemption. A public entity applicant or public entity self-insurer that requests exemption from posting security shall file a certified statement along with its Workers' Compensation Liability form with the Commission before the effective date of initial self-insurance or before the anniversary date, if a renewal, that contains the following:
 - 1. A statement that the public entity meets the conditions required under subsection (A);
 - 2. A statement that the governing body of the public entity

shall immediately notify the Commission and provide security required under this Article if the governing body learns that the risk management fund has insufficient funds to cover all workers' compensation liabilities of the public entity self-insurer;

- 3. The signatures of a majority of the members of the public entities' governing body; and
 - 4. If the Commission has previously authorized the public entity to self-insure its workers' compensation obligations, a statement requesting the return of security previously posted or provided to the Commission, including a specific description of the type and amount of security previously posted or provided.
- C. Approval or denial of request for exemption.
 - 1. If the Commission determines that a self-insurer qualifies for exemption under this Section, the Division shall return to the self-insurer security previously posted or provided to the Commission, within 30 days after receiving written notice under subsection (B).
 - 2. If the Commission denies a request for exemption under this subsection, the Commission shall provide written notice to the public entity within 10 days of the initial written request. The applicant or self-insurer has 10 days from the date the Commission's notice is received to request a hearing under A.R.S. § 23-945.
 - D. Failure to comply with conditions of exemption. The Commission shall order a self-insurer exempt under subsection (A) to immediately file with the Commission a completed, dated, and signed Workers' Compensation Liability form and post or provide security as required under this Article if any of the following occurs:
 - 1. The self-insurer fails to file the certified statement to request renewal of self-insurance authority;
 - 2. The self-insurer fails to comply with the conditions in subsection (A); or
 - 3. The Commission determines, based upon receipt of information under subsection (B), or its own review, that the self-insurer's risk management fund has insufficient funds to cover all actuarial liabilities for workers' compensation liabilities of the self-insurer.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1115. Rating Plans Available for a Self-insurer

- A. A self-insurer shall use one of the following rating plans to calculate the premium taxes required under A.R.S. §§ 23-961 and 23-1065:
 - 1. Fixed-premium plan;
 - 2. Ex-medical plan;
 - 3. Guaranteed-cost plan; or
 - 4. Retrospective-rating plan.
- B. The provisions of the rating plans apply only to operations and payroll in Arizona. The self-insurer shall combine all operations in Arizona as a single base to calculate any premium modification.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1116. Fixed-Premium Plan; Formula; Eligibility; Necessary Information for Plan

- A. The Division shall calculate the net taxable premium under a fixed-premium plan as follows: payroll multiplied by the applicable workers' compensation rate minus the premium discount.

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- B.** A self-insurer shall use a fixed-premium plan to calculate its net taxable premium if:
1. The self-insurer elects this plan;
 2. The self-insurer's annual net taxable premium does not exceed \$100,000; or
 3. The self-insurer is not eligible for any other plan authorized by the Commission under this Article.
- C.** A self-insurer shall provide the following information in support of the fixed-premium plan:
1. Self-insurer's Payroll Report,
 2. Self-insurer's Medical Report, and
 3. Self-insurer's Quarterly Tax Payment form.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1117. Ex-medical Plan; Formula; Eligibility; Necessary Information for Plan

- A.** The Division shall calculate the net taxable premium under an ex-medical plan as follows: [(payroll multiplied by the applicable workers' compensation rate) multiplied by (1 minus the ex-medical factor)] minus the premium discount.
- B.** A self-insurer may use the ex-medical plan if:
1. The self-insurer's program for medical, surgical, or hospital services meets the requirements of A.R.S. § 23-1070; and
 2. The self-insurer's annual net taxable premium exceeds \$100,000.
- C.** A self-insured shall provide the following information in support of the plan submitted under this Section:
1. Self-insurer's Payroll Report,
 2. Self-insurer's Hospital Report,
 3. Self-insurer's Medical Report, and
 4. Self-insurer's Quarterly Tax Payment form.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1118. Guaranteed-Cost Plan; Formula; Eligibility; Necessary Information for Plan

- A.** The Division shall calculate the net taxable premium under a guaranteed-cost plan as follows: [(payroll multiplied by the applicable worker's compensation rate) multiplied by (the experience modification rate) minus the premium discount].
- B.** A self-insurer may use the guaranteed-cost plan if:
1. The self-insurer has an annual net taxable premium exceeding \$100,000; and
 2. Uses an experience modification rate calculated as follows:
 - a. In the first year of self-insurance, the experience modification rate is 1.0;
 - b. In the second and third years of self-insurance, the Division calculates the experience modification rate based upon the loss data accumulated by the self-insurer during its term of self-insurance; and
 - c. In the fourth year of self-insurance and all following years, the Division calculates the experience modification rate based upon the most recent three years of loss data provided on the Self-insured Injury Report, excluding the most recent year.
- C.** A self-insurer shall provide the following information in support of the guaranteed-cost plan:
1. Self-insurer's Payroll Report,
 2. Self-insurer's Medical Report,
 3. Self-insurer's Injury Report, and
 4. Self-insurer's Quarterly Tax Payment form.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1119. Retrospective-Rating Plan; Formula; Eligibility; Necessary Information for Plan

- A.** The Division shall calculate the net taxable premium under a retrospective-rating plan as follows: [(payroll multiplied by the applicable worker's compensation rate multiplied by the experience modification rate multiplied by the basic premium factor) added to (losses for the current year plus adjusted losses from the previous year) multiplied by (the loss conversion factor)] multiplied by the tax multiplier. The net taxable premium is subject to a maximum and minimum premium level.
- B.** A self-insurer may use the retrospective-rating plan if:
1. The self-insurer has an annual net taxable premium exceeding \$100,000; and
 2. The Division calculates the experience modification rate as follows:
 - a. In the first year of self-insurance, the experience modification rate is 1.0;
 - b. In the second and third years of self-insurance, the Division calculates the experience modification rate based upon the loss data accumulated by the self-insurer during its term of self-insurance; and
 - c. In the fourth year of self-insurance and all following years, the Division calculates the experience modification rate based upon the most recent three years of loss data provided on the Self-insured Injury Report, excluding the most recent year. The Division shall use the most recent year's data to calculate the actual premium tax.
- C.** A self-insurer shall provide the following information in support of the retrospective-rating plan:
1. Self-insurer's Payroll Report;
 2. Self-insurer's Medical Report;
 3. Self-insurer's Injury Report; and
 4. Self-insurer's Quarterly Tax Payment form.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1120. Completion of Reports in Support of Tax Rating Plan; Calculation and Payment of Taxes Owed by Self-insurer under A.R.S. §§ 23-961 and 23-1065

- A.** A self-insurer shall submit to the Division the information required in R20-5-1116, R20-5-1117, R20-5-1118, or R20-5-1119 by February 15 of each year.
- B.** After receiving the information required under A.R.S. § 23-961, § 23-1065, and this Article, the Division shall determine the annual taxes owed by the self-insurer. The Division shall determine whether the self-insurer has overpaid or underpaid its taxes for the previous calendar year. If the total of the quarterly payments is less than the actual taxes for the year, the self-insurer shall pay the difference on or before March 31 of the calendar year in which the taxes are due. If the total of the quarterly payments exceeds the amount of the actual taxes for the year, then the Division shall refund the amount described in A.R.S. § 23-961 or § 23-1065 as applicable.
- C.** A self-insurer shall pay to the Commission the self-insurer's annual workers' compensation premium taxes on or before March 31 based on the net taxable premium calculated for the preceding calendar year. A self-insurer shall pay a premium tax of at least \$250.00 per calendar year.

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- D. The Division shall calculate a self-insurer's quarterly taxes owed under A.R.S. §§ 23-961 and 23-1065 in one of the following ways:
1. 25% of the tax calculated for the previous year; or
 2. A calculation based on actual payroll and losses calculated for each quarter, using the same rating plan to calculate the quarterly payment as used to calculate the taxes required under A.R.S. §§ 23-961 and 23-1065. If the Division selects this method, the self-insurer shall submit quarterly payroll and loss information by classification code.
- E. Quarterly tax payments are due April 30, July 31, October 31, and January 31 for the periods ending March 31, June 30, September 30, and December 31, respectively.
- F. If the self-insurer fails to pay the annual or quarterly taxes to the Commission when due, the self-insurer shall pay a penalty of \$25.00 or 5% of the tax or payment due, whichever is more, plus interest at the rate of 1% per month from the date the tax or payment was due until paid.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1121. Basis for Definitions, Classifications, Rating Procedures, and Plans

The Division shall use the definitions, classifications, rating procedures, and plans specified in the rating systems filed by the rating organization used by the State Compensation Fund under A.R.S. Title 20, Chapter 2, Article 4 in calculating the net taxable premium under A.R.S. §§ 23-961 and 23-1065.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1122. Report, Book, Record, and Data Review by the Commission

- A. All reports, books, records, and data of a self-insurer relating to classifications, payroll, incurred-loss reserves, calculation of premiums, completion of Workers' Compensation Liability form, and procedures for development of statistical information for the development of rating information are subject to review by the Commission or its authorized representative upon request.
- B. A self-insurer shall ensure that the reports, books, records, and data described in subsection (A) are readily available for review by the Commission.
- C. A self-insurer shall ensure that the reports, books, records, and data described in subsection (A) are clear, valid, and understandable.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1123. Audit and Cost of Audit

The Commission may, at any time, perform or have performed for its benefit an audit of the payroll, loss payment, and loss reserve records for incurred losses of a self-insurer for the purpose of determining the scope and adequacy of the records. The entire cost of the audit shall be borne by the self-insurer.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1124. Requirement to Provide Information to the Commission

A self-insurer shall make available to the Commission, upon request and at an office of the Commission, information described in this Article.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1125. Notice to Commission of Location of Self-insurer's Claims Files

In addition to the requirements found in 20 A.A.C. 5, Article 1, a self-insurer shall advise the Claims Manager of the location of the self-insurer's open and closed workers' compensation claims files. Except for a claims file that is made available for copying and inspection under R20-5-131(C), if a self-insurer or third-party administrator intends to change the location of its claims files, the self-insurer shall provide written notice to the Claims Manager of the change in location at least 30 days before the files are moved.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1126. Processing of Workers' Compensation Claims by a Self-insured Employer

The Claims Division shall permit a self-insurer to process its own workers' compensation claims if the self-insurer provides information and supporting documentation establishing the following:

1. The self-insurer has facilities and equipment to manage, process, and store its own information pertaining to the self-insurer's workers' compensation claims;
2. The self-insurer's workers' compensation claims are processed by persons with experience, training by the Claims Division, or knowledge regarding the Arizona Workers' Compensation Act; and
3. The persons processing the self-insurer's workers' compensation claims attend and complete training provided by the Claims Division.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1127. Review of Initial Application and Request for Renewal to Self-insure

- A. Upon the filing of a completed initial application or request for renewal, the Division shall:
1. Determine whether the applicant or self-insurer meets the requirements of A.R.S. § 23-961;
 2. Determine whether the applicant or self-insurer meets the requirements of this Article. Except for a self-insurer that is exempt under R20-5-1114, the self-insurer shall post security according to R20-5-1109 that is adequate to provide for the self-insurer's future estimated liability. If applicable, the Division shall advise the applicant or self-insurer of the need for additional security, and the self-insurer shall post the additional security before the Commission makes its decision under R20-5-1128;
 3. If a self-insurer requests a decrease of 10% or greater in the value or amount of security provided in the prior year, perform an additional review to determine the adequacy of the security deposit, including:
 - a. Mathematical verification of the accuracy of amounts reported on the Workers' Compensation Liability form;
 - b. Review of claims filed for the three preceding years;
 - c. Review of changes in the payroll of the self-insurer to determine changes in employment levels;

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- d. Review of changes in workers' compensation classification codes to determine changes in operations of the company in Arizona; and
 - e. Review of the financial condition of the self-insurer to determine changes in financial stability, including a review of the total incurred liability expenses for the past three years;
4. Determine whether the applicant or self-insurer has the ability to process and pay benefits required under the Arizona Workers' Compensation Act.
- a. For an applicant that is not a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
 - i. Reviewing the financial statements to determine the current ratio, quick ratio, cash-flow ratio, working-capital ratio, debt-status ratio, profitability ratio, and the applicant's net profit or loss;
 - ii. Comparing the applicant's ratios with the ratios of existing self-insurers in the same or a closely related industry;
 - iii. Reviewing notes to the financial statements;
 - iv. Reviewing management reports of operations and other information provided by the self-insurer; and
 - v. Comparing the applicant's ratio of claims filed to total employees with that of other employers within the same or closely related industry;
 - b. For an applicant that is a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
 - i. Reviewing the public entity's general fund financial statement to determine the cash ratio and fund equity ratio;
 - ii. Reviewing excess revenues over expenditures and the ending balances in the general fund and all fund accounts for the past two years;
 - iii. Reviewing notes to the self-insurer's financial statements;
 - iv. Reviewing management reports of operations and other information provided by the self-insurer;
 - v. Comparing the public entity's ratio of claims filed to total employees with that of other public entities;
 - vi. Comparing cash and fund equity ratios with that of other self-insured public entities; and
 - vii. Reviewing the risk management fund to determine if it is sufficient to pay all workers' compensation liabilities;
 - c. For a self-insurer requesting renewal that is not a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
 - i. Reviewing the information in subsection (A)(4)(a);
 - ii. Reviewing the claims profile for the past three years, which includes a review of the claims filed, claims denied, and denial rate;
 - iii. Reviewing of the self-insurer's experience modification rate;
 - iv. Comparing of the self-insurer's ratio of claims filed to total employees with that of other self-insurer's; and
 - v. Reviewing the Parent Company Guaranty form; and
 - d. For a self-insurer requesting renewal that is a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
 - i. Reviewing the information in subsection (A)(4)(b);
 - ii. Reviewing the claims profile for the past three years, including a review of the claims filed, claims denied, and denial rate;
 - iii. Reviewing the self-insured's experience modification rate; and
 - iv. Comparing the self-insurer's ratio of claims filed to total employees with that of other self-insured public entities of similar size.
- B.** The Division shall present the findings and recommendations of its review to the Commission, and may include a recommendation regarding the adequacy of the security based on its review and determination whether the self-insurer has the ability to process and pay as set forth in subsection (A)(3).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1128. Decision by the Commission on Initial Application or Request for Renewal of Authorization to Self-insure

- A.** The Commission shall consider the following before granting or denying an initial application or request for renewal to self-insure:
1. The information submitted by an applicant or self-insurer;
 2. The information and recommendations of the Division; and
 3. The requirements of A.R.S. § 23-961 and this Article, including compliance with the requirement for posting additional security as recommended by the Division under R20-5-1127.
- B.** The Commission shall deny authority to self-insure if the Commission finds one or more of the following conditions:
1. The applicant or self-insurer does not meet the requirements of A.R.S. § 23-961,
 2. The applicant or self-insurer does not meet the requirements of this Article, or
 3. The applicant or self-insurer is unable to process and pay benefits under the Arizona Workers' Compensation Act.
- C.** The Commission may table consideration of, or action on, a request for renewal pending the self-insurer posting additional security based on a Division decision under R20-5-1127 that the posted security is insufficient.
- D.** Whether to grant, deny, or table an application for self-insurance authority shall be made by a majority vote of a quorum of Commission members present when the application for initial authority or renewal is presented at a public meeting.
- E.** If the Commission approves an initial application of an applicant that is not exempt under R20-5-1114:
1. The approval is contingent upon the self-insurer posting the required security;
 2. After the Commission takes action under subsection (D), the Division shall provide written notice to the applicant that the Commission approves the application for self-insurance authority effective on a date certain;
 3. The applicant shall provide to the Commission the required security before the effective date of the authority to self-insure; and
 4. After the applicant complies with the requirements of subsection (E)(3), the Division shall mail a Resolution of Authorization to Self-insure to the last known business address of the applicant.

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- F.** If an applicant fails to comply with the requirements of subsection (E)(3), the Commission shall not grant authority to self-insure and the Commission shall deem the initial application withdrawn.
- G.** If the Commission approves an initial application of an applicant exempt under R20-5-1114, the Division shall mail a Resolution of Authorization to Self-insure, to the last known business address of the applicant.
- H.** If the Commission approves a request for renewal of authority to self-insure, or tables consideration of the request for renewal, the Division shall mail written notice of the Commission's action on the request for renewal to the last known business address of the self-insurer.
- I.** If the Commission denies authority to self-insure, the Commission shall issue and mail written findings and an order to the last known business address of the applicant or self-insurer no later than 10 days after the Commission denies authority to self-insure.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1129. Right to Request a Hearing

- A.** An applicant or self-insurer has 15 days from the date the Commission's findings and order is mailed to request a hearing.
- B.** A request for hearing shall comply with A.R.S. § 23-945 and be signed by an authorized representative of the applicant or self-insurer or the applicant's or self-insurer's legal representative. The applicant or self-insurer shall file the request for hearing with the Division.
- C.** The Commission shall deem its findings and order final if a request for hearing is not received by the Division within the time specified in subsection (A).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1130. Hearing Rights and Procedures

- A. Burden of proof.**
1. Except as provided in subsection (A)(2), in all proceedings arising out of this Article, the applicant or self-insurer has the burden of proof to establish that it has met the requirements of A.R.S. § 23-901 et seq. and this Article.
 2. In a revocation hearing, the Commission has the burden of proof to establish that the self-insurer has committed the acts described in R20-5-1133.
- B. Roles of Chair and Chief Counsel.**
1. The Chair of the Commission or designee shall preside over hearings held under this Article. Except as otherwise provided in this Section, the Chair shall apply the provisions of A.R.S. § 41-1062 to hearings held under this Article and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.
 2. The Chief Counsel of the Commission shall represent the Commission in hearings held before the Commission and upon direction of the Chair of the Commission shall issue on behalf of the Commission all notices and subpoenas required under this Section.
- C. Appearance by a party.**
1. Except as otherwise provided by law, a party to a hearing may appear on its own behalf or through counsel.
 2. When an attorney appears or intends to appear before the Commission, the attorney shall file a notice of appearance.
- D. Filing and service.**
1. For purposes of this Section, a document is considered filed when the Commission receives the document. All documents required to be filed under this Section with the Commission shall be served upon the Chief Counsel of the Commission and upon all parties to the proceeding.
 2. Except as otherwise provided in A.R.S. § 23-901, et seq. and this Article, service of all documents upon the Commission, applicant, or self-insurer shall be by personal service or mail. Personal service includes delivery upon the Commission or party. Service by mail includes every type of service except personal service and is complete on mailing.
- E. Notice of hearing.**
1. The Commission shall give the parties at least 20 days notice of hearing.
 2. A notice of hearing shall be in writing and mailed to the last known address of the applicant or self-insurer as shown on the records of the Commission, or upon the applicant's or self-insurer's representative if a notice of appearance has been filed by a representative.
 3. A notice of hearing shall comply with the requirements in A.R.S. § 41-1061.
- F. Evidence.**
1. The civil rules of evidence do not apply to hearings held under this Section.
 2. A party may make an opening and closing statement with the permission of the Chair if the Chair determines that the statement will be helpful to a determination of the issues.
 3. All witnesses at a hearing shall testify under oath or affirmation.
 4. A party may present evidence and conduct cross-examination of witnesses.
 5. The Commission Chair may admit documents into evidence if filed no later than 15 days before the date of the hearing. Upon request or upon direction from the Commission Chair, the Commission may issue a subpoena to the author of any document submitted into evidence to appear and testify at the hearing.
 6. Upon written request by a party or upon direction from the Commission Chair, the Commission may issue a subpoena requiring the attendance and testimony of a witness whose testimony is material. A party shall submit its subpoena request no later than 10 days before the date of the hearing.
 7. Upon written request by a party or upon direction from the Commission Chair, the Commission may issue a subpoena duces tecum requiring the production of documents or other tangible evidence. The written request by a party shall contain a statement explaining the general relevance, materiality, and reasonable particularity of the documentary or other tangible evidence and the facts to be proved by them.
- G. Transcript of Proceedings.** The Commission shall stenographically report or electronically record hearings. Any party desiring a copy of transcript shall obtain a copy from the court reporter. Any party desiring a copy of an electronic recording may obtain a copy from the Commission.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1131. Decision Upon Hearing by the Commission

- A.** A decision of the Commission to deny authority to self-insure shall be based upon the grounds in R20-5-1128 and shall be made by a majority vote of the quorum of Commission members present at a public meeting.

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- B. A decision of the Commission to revoke authority to self-insure shall be based upon the grounds in R20-5-1133 and shall be made by a majority vote of the quorum of Commission members present at a public meeting.
 - C. The Commission shall issue a written decision after the hearing that shall include findings of fact and conclusions of law, separately stated.
 - D. The Commission decision is final unless an applicant or self-insurer requests review under R20-5-1132 no later than 15 days after the written decision is mailed to the parties.
- 7. Failure or deliberate refusal to comply with the requirements of 20 A.A.C. 5, Article 1;
 - 8. Failure to deposit or file security timely as specified in this Article; or
 - 9. Failure to provide information or documentation necessary to timely renew the Authorization to Self-insure.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1132. Request for Review

- A. A party may request review of a Commission decision issued under R20-5-1131 by filing with the Commission a written request for review no later than 15 days after the written decision is mailed to the parties.
 - B. A request for review of a Commission Decision shall be based upon one or more of the following grounds, which have materially affected the rights of a party:
 1. Irregularities in the hearing proceedings or any order or abuse of discretion that deprives a party seeking review of a fair hearing;
 2. Accident or surprise, which could not have been prevented by ordinary prudence;
 3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
 4. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of the hearing;
 5. Bias or prejudice of the Division or Commission; and
 6. The order, decision, or findings of fact are not justified by the evidence or are contrary to law.
 - C. The request for review shall state the specific facts and law in support of the request and shall specify the relief sought.
 - D. The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.
 - E. The Commission's decision upon review is final unless an applicant or self-insurer seeks judicial review as provided in A.R.S. § 23-946.
- B. Upon receiving information that a self-insurer has committed an act described in subsection (A), the Division shall conduct an investigation of the facts of the alleged misconduct. If, upon completion of the investigation, the Division determines that sufficient evidence exists to warrant revocation of a self-insurer's authority to self-insure, the Division shall present its findings to the Commission.
 - C. The Commission shall consider the findings and recommendation of the Division before revoking a self-insurer's authorization to self-insure.
 - D. The Commission shall revoke a self-insurer's authority to self-insure if the Commission finds one or more of the grounds in subsection (A). The Commission shall issue written findings and an order revoking the Resolution of Authorization to Self-insure and shall serve a copy of the findings and order upon the self-insurer addressed to the last known address of the self-insurer as shown by the records of the Commission.
 - E. A self-insurer has 15 days from the date the Commission serves the findings and order described in subsection (D) to request a hearing. The request for hearing shall comply with the requirements of A.R.S. § 23-945.
 - F. R20-5-1130, R20-5-1131, and R20-5-1132 govern hearing rights and procedures for revocation hearings and review.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1134. Notice of Bankruptcy, Change in Ownership Status, or Change in Business Address

- A. A self-insurer shall notify the Commission in writing within 24 hours of any bankruptcy filing under federal law or insolvency proceeding under any state's laws.
- B. A self-insurer shall notify the Commission in writing within 24 hours of any change in the ownership status or business address of the employer.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1133. Revocation of Authorization to Self-insure

- A. The Commission may revoke a Resolution of Authorization to Self-insure for good cause. Good cause includes any of the following:
 1. An inability or failure to process and pay any claim under the Arizona Workers' Compensation Act;
 2. Failure of the self-insurer to pay any taxes levied by the Commission as required under A.R.S. §§ 23-961 and 23-1065 and this Article;
 3. Failure of the self-insurer to comply with the requirements of this Article, including the failure of the self-insurer to:
 - a. Promptly provide the Commission reports or other information required under this Article; and
 - b. File the written Letter of Intent required under R20-5-1135;
 4. Failure or deliberate refusal to comply with the applicable requirements of A.R.S. § 23-901 et seq.;
 5. Failure to pay or comply with any award or order of the Commission after the award or order becomes final;
 6. Willful misstating of any material fact in a tax report, application, renewal documentation, or other report or statement made to or filed with the Commission;
- 7. Failure or deliberate refusal to comply with the requirements of 20 A.A.C. 5, Article 1;
 - 8. Failure to deposit or file security timely as specified in this Article; or
 - 9. Failure to provide information or documentation necessary to timely renew the Authorization to Self-insure.

R20-5-1135. Plan of Action for Retaining Self-insurance Authority in the Event of Insolvency or Bankruptcy

- A. If a self-insurer becomes insolvent or files for protection under the United States Bankruptcy Code seeking to reorganize, and desires to remain self-insured, it shall file with the Division a written Letter of Intent regarding its intent to reorganize under the applicable provisions of the United States Bankruptcy Code.
 1. If the self-insurer is incorporated, the chief executive officer shall sign the Letter of Intent and the board of directors shall approve the Letter if the corporation is still operating;
 2. If the self-insurer is not incorporated, an authorized representative of the self-insurer shall sign the Letter of Intent; or
 3. An attorney representing the entity in its bankruptcy reorganization case may sign the Letter of Intent instead of the chief executive officer or authorized representative.

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- B. The self-insurer shall file the Letter of Intent with the Division within 10 days of the initial bankruptcy filing or insolvency proceeding.
- C. The self-insurer shall ensure that a provision addressing the self-insurer's obligations to workers' compensation claimants and the Commission is included in the Plan of Reorganization filed with the United States Bankruptcy Court. This Plan shall state the self-insurer's intentions and financial ability to continue self-insurance.
- D. During the period between the initial bankruptcy filing and the approval of a Plan of Reorganization or Plan of Liquidation, the self-insurer may continue its self-insurance status only upon the demonstration of adequate protection to cover its current workers' compensation claims, or those claims that may come due before the Bankruptcy Court approves the Reorganization or Insolvency Plan. As part of the adequate protection for the Commission, the self-insurer shall post or deposit additional security in an amount the Commission deems necessary to pay claims currently pending or anticipated before the approval of the Plan of Reorganization or liquidation.
- E. The self-insurer, or its legal representative, shall send a copy of the proposed Plan of Reorganization or Liquidation, including amendments to the Division.
- F. The Commission may file an Objection to the Plan of Reorganization in the appropriate bankruptcy court and take other actions as permitted under the United States Bankruptcy Code if it determines that the Plan of Reorganization or Liquidation does not adequately provide for the processing and payment of the self-insurer's workers' compensation claims.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1136. Notice of Self-insurer's Termination of Self-insurance

- A. A self-insurer shall file with the Division a completed and signed Notice of Self-insurer's Termination of Self-insurance form, if the self-insurer decides to terminate its self-insurance. The Notice of Self-insurer's Termination shall be filed with the Division 30 days before the effective date of termination of self-insurance.
- B. Before the effective date of the termination of self-insurance, the self-insurer shall file a certificate with the Claims Division designating an insurance carrier, or other proof, satisfactory to the Commission, of compliance with the requirements of A.R.S. § 23-961, to cover claims of the self-insurer that:
 1. Are pending at that time the self-insurer terminates self-insurance; and
 2. Occur after the effective date of the termination of self-insurance.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

ARTICLE 12. ARIZONA MINIMUM WAGE AND EARNED PAID SICK TIME PRACTICE AND PROCEDURE**R20-5-1201. Notice of Rules**

- A. This Article applies to all actions and proceedings before the Industrial Commission of Arizona arising under A.R.S. Title 23, Articles 8 and 8.1.
- B. The Industrial Commission of Arizona shall provide a copy of this Article upon request to any person free of charge.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785,

effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 2907, effective October 3, 2017 (Supp. 17-4).

R20-5-1202. Definitions

In this Article, the definitions of A.R.S. §§ 23-362 (version two), 23-371, and 23-364 apply. In addition, unless the context otherwise requires, the following definitions shall apply to both the Act and this Article:

1. "Act" means A.R.S. Title 23, Chapter 2, Articles 8 and 8.1.
2. "Affected employee" means an employee or employees on whose behalf a complaint may be filed alleging a violation under the Act.
3. "Amount of earned paid sick time available to the employee" means the amount of earned paid sick time or equivalent paid time off that is available to the employee for use in the current year.
4. "Amount of earned paid sick time taken by the employee to date in the year" means the amount of earned paid sick time or equivalent paid time off taken by the employee to date in the current year. Where an employee has used available equivalent paid time off for either the purposes enumerated in A.R.S. § 23-373 or other purposes, the employer may count that usage towards the "amount of earned paid sick time taken by the employee to date in the year."
5. "Amount of pay the employee has received as earned paid sick time" means the amount of pay the employee has received as earned paid sick time or equivalent paid time off to date in the current year. Where an employee has received pay for equivalent paid time off for the purposes enumerated in A.R.S. § 23-373 or other purposes, the employer may count that pay towards the "amount of pay the employee has received as earned paid sick time."
6. "Authorized representative" means a person prescribed by law to act on behalf of a party who files with the Department a written instrument advising of the person's authority to act on behalf of the party.
7. "Casual Basis," when applied to babysitting services, means employment which is irregular or intermittent.
8. "Commission" means monetary compensation based on:
 - a. A percentage of total sales,
 - b. A percentage of sales in excess of a specified amount,
 - c. A fixed allowance per unit, or
 - d. Some other formula the employer and employee agree to as a measure of accomplishment.
9. "Communicable disease" has the meaning prescribed by A.R.S. § 36-661.
10. "Complainant" means a person or organization filing an administrative complaint under the Act.
11. "Department" means the Labor Department of the Industrial Commission of Arizona or other authorized division of the Industrial Commission as designated by the Industrial Commission.
12. "Earned sick time" under A.R.S. § 23-364(G) means earned paid sick time.
13. "Employee's regular paycheck" means a regular payroll record that is readily available to employees and contains the information required by A.R.S. § 23-375(C), including physical or electronic paychecks or paystubs.
14. "Equivalent paid time off" means paid time off provided under a paid leave policy, such as a paid time off policy, that makes available an amount of paid leave sufficient to

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.

B. Upon petition by any person that any employment or place of employment is not safe or is injurious to the welfare of any employee, the commission has power and authority, with or without notice, to make investigations necessary to determine the matter complained of.

C. The members of the commission may confer and meet with officers of other states and officers of the United States on matters pertaining to their official duties.

D. Notwithstanding any other law, the commission may protect from public inspection the financial information that is received from a private entity that applies to self-insure or that renews its self-insurance plan pursuant to section 23-961, subsection A if the information is kept confidential by the private entity in its ordinary and regular course of business.

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.

11-952.01. Public agency pooling of property, fidelity, liability, workers' compensation, life, health, accident and disability coverage; exemptions; board of trustees; contract; termination; audit; insolvency; definition

A. In addition to other authority granted pursuant to this title, two or more public agencies may enter into contracts or agreements pursuant to this article for the joint purchasing of insurance, including prepaid legal insurance or reinsurance, or to pool retention of their risks for property, fidelity and liability losses and to provide for the payment of such property loss, fidelity loss, prepaid legal insurance or claim of liability made against any member of the pool, including any elected or appointed official, officer or employee covered by the pool, on a cooperative or contract basis with one another or may jointly form a nonprofit corporation or enter into a trust agreement to carry out this section in their behalf directly or by contract with a private party.

B. In addition to other authority granted pursuant to this title, two or more public agencies may enter into contracts or agreements pursuant to this article to establish a workers' compensation pool to provide for the payment of workers' compensation claims pursuant to title 23, chapter 6 on a cooperative or contract basis with one another or may jointly form a nonprofit corporation or enter into a trust agreement to carry out this section in their behalf directly or by contract with a private party. A workers' compensation pool established pursuant to this subsection may provide coverage for workers' compensation, employers' liability and occupational disease claims. A workers' compensation pool is subject to approval as a self-insurer by the industrial commission of Arizona pursuant to section 23-961, subsection A, paragraph 2 and is subject to title 23, chapter 6 and rules adopted pursuant to that chapter in addition to the requirements of this section. The industrial commission of Arizona, by rule, resolution or order, may adopt requirements for the administration of a workers' compensation pool under this subsection, including separation or commingling of funds, accounting, auditing, reporting, actuarial standards and procedures.

C. In addition to other authority granted pursuant to this title, two or more public agencies may enter into contracts or agreements for the joint purchase of life insurance, disability insurance, accident insurance or health benefits plan insurance or may pool retention of their risks of loss for life, disability, health or accident claims made against any public agency member of the pool or to jointly provide the health and medical services authorized in section 36-2907. Public agencies may establish pools for the purposes of this subsection by any of the following methods:

1. On a cooperative or contract basis.
2. By the formation of a nonprofit corporation.
3. By contracts or intergovernmental agreements with the Arizona health care cost containment system administration.
4. By the execution of a trust agreement directly by the agencies or by contracting with a third party.

D. In addition to other authority granted pursuant to this title, two or more public agencies may enter into contracts or agreements pursuant to this article for the joint purchasing of insurance for property, liability or workers' compensation losses or to pool retention of their risks for property and liability loss to cover the public agency, its elected officials and employees and the contractor and subcontractor of every tier engaged in the performance of a construction project for the public agency. Public agencies may establish pools for the purposes of this subsection by any of the following methods:

1. On a cooperative or contract basis.
2. By the formation of a nonprofit corporation.
3. By the execution of a trust agreement directly by the agencies or by contracting with a third party.

E. Section 10-11301 does not apply to nonprofit corporations formed pursuant to this section.

F. Title 41, chapter 23 does not apply to the procurement of insurance or reinsurance, or to the procurement of the services provided for in subsection K, paragraph 8 of this section, by any pool established pursuant to this section.

G. Title 43 does not apply to any pool established pursuant to this section. Any pool established pursuant to this section is exempt from taxation under title 43.

H. Each pool shall be operated by a board of trustees consisting of at least three persons who are elected officials or employees of public entities within this state. The board of trustees shall notify the director of the department of insurance and financial institutions of the existence of the pool and shall file with the director and with the attorney general a copy of the intergovernmental agreement or contract. The board of trustees of each group shall do all of the following:

1. Establish terms and conditions of coverage within the pool, including exclusions of coverage.
2. Ensure that all claims are paid promptly.
3. Take all necessary precautions to safeguard the assets of the group.
4. Maintain minutes of its meetings.
5. Designate an administrator to carry out the policies established by the board of trustees and to provide day-to-day management of the group and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator.
6. If the pool is a workers' compensation pool, file a copy of the agreement with the director of the industrial commission of Arizona.

I. If the pool includes private, nonprofit educational institutions, each private, nonprofit educational institution shall post a bond, cash deposit or other comparable financial security in an amount that is equal to at least one and one-half times the amount of the private, nonprofit educational institution's annual premium to ensure payment of the school's or institution's legal liabilities and other obligations if the pool is determined to be insolvent or is otherwise found to be unable to discharge the pool's legal liabilities and other obligations pursuant to subsection N of this section.

J. The board of trustees shall not:

1. Extend credit to individual members for payment of a premium, except pursuant to payment plans established by the board.
2. Borrow any monies from the group or in the name of the group except in the ordinary course of business.

K. In addition to the requirements of section 11-952, a contract or agreement made pursuant to this section shall contain the following:

1. A provision for a system or program of loss control.
2. A provision for termination of membership, including either:
 - (a) Cancellation of individual members of the pool by the pool.
 - (b) Election by an individual member of the pool to terminate its participation.
3. A provision requiring the pool to pay all claims for which each member incurs liability during each member's period of membership.

4. A provision stating that each member is not relieved of its liability incurred during the member's period of membership except through the payment of losses by the pool or by the member.
 5. A provision for the maintenance of claim reserves equal to known incurred losses and an estimate of incurred but not reported claims.
 6. A provision for a final accounting and settlement of the obligations of or refunds to a terminating member to occur when all incurred claims are concluded, settled or paid.
 7. A provision that the pool may establish offices where necessary in this state and employ necessary staff to carry out the purposes of the pool.
 8. A provision that the pool may retain legal counsel, actuaries, auditors, engineers, private consultants and advisors.
 9. A provision that the pool may make and alter bylaws and rules pertaining to the exercise of its purpose and powers.
 10. A provision that the pool may purchase, lease or rent real and personal property it deems necessary.
 11. A provision that the pool may enter into financial services agreements with banks and other financial institutions, that it may issue checks in its own name and that it may invest its monies in equity securities, mutual funds and investment funds registered with the United States securities and exchange commission, debt obligations and any eligible investment allowed by section 35-323.
- L. A pool or a terminating member shall provide at least ninety days' written notice of the termination or cancellation. A workers' compensation pool shall notify the industrial commission of Arizona of the termination or cancellation of a member thirty days before the termination or cancellation of the member.
- M. The pool shall be audited annually at the expense of the pool by a certified public accountant, with a copy of the report submitted to the governing body or chief executive officer of each member of the pool and to the director of the department of insurance and financial institutions. The board of trustees of the pool shall obtain an appropriate actuarial evaluation of the claim reserves of the pool, including an estimate of the incurred but not reported claims. The department of insurance and financial institutions shall examine each public agency pool once every five years. The director of the department of insurance and financial institutions may examine a public agency pool sooner than five years from the preceding examination if the director has reason to believe that the pool is insolvent. The costs of any examination shall be paid by the pool subject to the examination.
- N. If, as a result of the annual audit or an examination by the director of the department of insurance and financial institutions, it appears that the assets of the pool are insufficient to enable the pool to discharge its legal liabilities and other obligations, the director of the department of insurance and financial institutions shall notify the administrator and the board of trustees of the pool of the deficiency and the director's list of recommendations to abate the deficiency, including a recommendation not to add any new members until the deficiency is abated. If the pool fails to comply with the recommendations within sixty days after the date of the notice, the director shall notify the chief executive officer or the governing bodies, if any, of the members of the pool, the governor, the president of the senate and the speaker of the house of representatives that the pool has failed to comply with the recommendations of the director.
- O. If a pool is determined to be insolvent or is otherwise found to be unable to discharge its legal liabilities and other obligations, each agreement or contract shall provide that the members of the pool shall be assessed on a pro rata basis as calculated by the amount of each member's annual contribution in order to satisfy the amount of deficiency. The assessment shall not exceed the amount of each member's annual contribution to the pool.
- P. A pool established pursuant to this section may make available programs providing for insurance coverages described in subsections A, B and C of this section to those charter schools governed by section 15-183,

subsection M and, except for a workers' compensation pool, to private, nonprofit educational institutions.

Q. In addition to the authority set forth in this title, a pool established pursuant to this section may invest public monies on behalf of pool members, but any such investments shall be limited to those allowed by section 35-323, except as provided in section 15-1225, subsection G. A pool established pursuant to this section may not invest monies that are required by law to be deposited with a county treasurer.

R. A pool established pursuant to this section, by the adoption of a resolution of continuing effect, may authorize and request the state treasurer to invest funds for the pool pursuant to section 35-326.

S. A pool established pursuant to this section may offer services on behalf of pool participants that participate in the unemployment insurance program administered by the department of economic security, including the option to make payments in lieu of contributions as allowed by sections 23-750 and 23-751. The pool is deemed an agent of the pool participants as employers for the purposes of title 23, chapter 4.

T. For the purposes of this section, "health benefits plan" means a hospital or medical service corporation policy or certificate, a health care services corporation contract, a multiple employer welfare arrangement or any other arrangement under which health and medical benefits and services are provided to two or more persons.

23-961. Methods of securing compensation by employers; deficit premium; civil penalty.

A. Employers shall secure workers' compensation to their employees in one of the following ways:

1. By insuring and keeping insured the payment of such compensation with an insurance carrier authorized by the director of the department of insurance and financial institutions to write workers' compensation insurance in this state.

2. By furnishing to the commission satisfactory proof of financial ability to pay the compensation directly or through a workers' compensation pool approved by the commission in the amount and manner and when due as provided in this chapter. The requirements of this paragraph may be satisfied by furnishing to the commission satisfactory proof that the employer is a member of a workers' compensation pool approved by the commission pursuant to section 23-961.01. The commission may require a deposit or any other security from the employer for the payment of compensation liabilities in an amount fixed by the commission, but not less than \$100,000 dollars for workers' compensation liabilities. If the employer does not fully comply with the provisions of this chapter relating to the payment of compensation, the commission may revoke the authority of the employer to pay compensation directly.

B. An employer may not secure compensation to comply with this chapter by any mechanism other than as provided in this section. No insurance, combination or other program may be marketed, offered or sold as workers' compensation that does not comply with this section. An employer violates this chapter if the employer purchases or secures its obligations under this chapter through a substitute for workers' compensation that does not comply with this section.

C. Insurance carriers that transact the business of workers' compensation insurance in this state are subject to the rules of the director of the department of insurance and financial institutions.

D. On application of an insurance carrier, the director of the department of insurance and financial institutions may order the release to the insurance carrier of all or part of the cash or securities that the insurance carrier deposited before July 1, 2015 with the state treasurer pursuant to this section. In determining whether to order the release of all or part of the deposit, the director of the department of insurance and financial institutions shall consider all of the following:

1. The financial condition of the insurance carrier.

2. The insurance carrier's liabilities for workers' compensation loss and loss expenses in this state.

3. Whether the insurance carrier is subject to a finding of hazardous condition, an order of supervision, a delinquency proceeding or any other regulatory action in this state, the insurance carrier's state of domicile or any other state in which the insurance carrier transacted the business of insurance.

4. Any other factors the director of the department of insurance and financial institutions determines are relevant to the application for release of the deposit.

E. Except in the event of nonpayment of premiums, each insurance carrier shall carry a risk to the conclusion of the policy period unless the policy is cancelled by the employer or unless one or both of the parties to a professional employer agreement terminate the agreement. The policy period shall be agreed on by the insurance carrier and the employer.

F. At least thirty days' notice shall be given by the insurance carrier to the employer and to the commission of any cancellation or nonrenewal of a policy if the cancellation or nonrenewal is at the election of the insurance carrier. The insurance carrier shall promptly notify the commission of any cancellation by the employer or failure of the employer to renew the policy. The failure to give notice of nonrenewal if the nonrenewal is at the election of the insurance carrier shall not extend coverage beyond the policy period. An insurance carrier shall

notify the commission on a form prescribed by the commission that it has insured an employer for workers' compensation promptly after undertaking to insure the employer.

G. Every insurance carrier on or before March 1 of each year shall pay to the state treasurer for the credit of the administrative fund, in lieu of all other taxes on workers' compensation insurance, a tax of not more than three percent on all premiums collected or contracted for during the year ending December 31 next preceding, less the deductions from such total direct premiums for applicable cancellations, returned premiums and all policy dividends or refunds paid or credited to policyholders within this state and not reapplied as premiums for new, additional or extended insurance. Every self-insured employer, including workers' compensation pools, on or before March 31 of each year shall pay a tax of not more than three percent of the premiums that would have been paid by the employer if the employer had been fully insured by an insurance carrier authorized to transact workers' compensation insurance in this state during the preceding calendar year. The commission shall adopt rules that shall specify the premium plans and methods to be used for the calculation of rates and premiums and that shall be the basis for the taxes assessed to self-insured employers. The tax shall be not less than \$250 per annum and shall be computed and collected by the commission and paid to the state treasurer for the credit of the administrative fund at a rate not exceeding three percent to be fixed annually by the industrial commission of Arizona. The rate shall be no more than is necessary to cover the actual expenses of the industrial commission of Arizona in carrying out its powers and duties under this title. Any quarterly payments of tax pursuant to subsection I of this section shall be deducted from the tax payable pursuant to this subsection.

H. An insurance carrier may reduce the amount of premiums paid by an employer by up to five percent if all of the following apply:

1. The insured employer complies with the drug testing policy requirements prescribed in section 23-493.04.
2. The insured employer conducts drug testing of prospective employees.
3. The insured employer conducts drug testing of an employee after the employee has been injured.
4. The insured employer allows the employer's insurance carrier to have access to the drug testing results under paragraphs 2 and 3 of this subsection.

I. Any insurer that, pursuant to this section, paid or is required to pay a tax of \$2,000 or more for the preceding calendar year shall file a quarterly report, in a form prescribed by the commission, accompanied by a payment in an amount equal to the tax due at the rates prescribed in subsection G of this section for premiums determined pursuant to subsection G of this section or an amount equal to twenty-five percent of the tax paid or required to be paid pursuant to subsection G of this section for the preceding calendar year. The quarterly payments shall be due and payable on or before the last day of the month following the close of the quarter and shall be made to the state treasurer.

J. If an overpayment of taxes results from the method prescribed in subsection I of this section the industrial commission of Arizona may refund the overpayment without interest.

K. An insurer who fails to pay the tax prescribed by subsection G or I of this section or the amount prescribed by section 23-1065, subsection A is subject to a civil penalty equal to the greater of \$25 or five percent of the tax or amount due plus interest at the rate of one percent per month from the date the tax or amount was due.

L. An insurance carrier authorized to write workers' compensation insurance may not assess an employer premiums for services provided by a contractor alleged to be an employee under section 23-902, subsection B or C, unless the carrier has done both of the following:

1. Prepared written audit or field investigation findings establishing that all applicable factors for determining employment status under section 23-902 have been met.
2. Provided a copy of such findings to the employer in advance of assessing a premium.

M. Notwithstanding section 23-901, paragraph 6, subdivision (i), a sole proprietor may waive the sole proprietor's rights to workers' compensation coverage and benefits if both the sole proprietor and the insurance carrier of the employer subject to this chapter for which the sole proprietor performs services sign and date a waiver that is substantially in the following form:

I am a sole proprietor, and I am doing business as (name of sole proprietor) . I am performing work as an independent contractor for (name of employer) . I am not the employee of (name of employer) for workers' compensation purposes, and, therefore, I am not entitled to workers' compensation benefits from (name of employer) . I understand that if I have any employees working for me, I must maintain workers' compensation insurance on them.

Sole proprietor Date

Insurance carrier Date

23-961.01. Self-insurance pools

A. Two or more employers, each of whom are engaged in similar industries, may enter into contracts to establish a workers' compensation pool to provide for the payment and administration of workers' compensation claims pursuant to this chapter. The members of each workers' compensation pool shall elect a board of trustees to manage the workers' compensation pool established pursuant to this section. Each member employer shall have been in business for at least five consecutive years before entering into a contract to establish a workers' compensation pool. The total amount of gross workers' compensation insurance premiums paid by the members of the pool in the year preceding the execution of the contract must equal at least seven hundred fifty thousand dollars. The group of employers that makes up a workers' compensation pool shall have been formed for a specific purpose, other than to engage in self-insurance, before the formation of a workers' compensation pool. Employers may establish workers' compensation pools pursuant to this section by one of the following means:

1. On a cooperative or contract basis.
2. Through the joint formation of a nonprofit corporation.
3. By the execution of a trust agreement to carry out the provisions of this chapter directly by the employers or by contracting with a third party.

B. A workers' compensation pool established pursuant to this section is subject to approval as a self-insurer by the industrial commission pursuant to section 23-961, subsection A, paragraph 2. The commission shall adopt rules as necessary to carry out the purposes of this section.

C. Workers' compensation pools established pursuant to this section are exempt from taxation under title 43.

D. Each agreement or contract shall provide that the members of a workers' compensation pool are jointly and severally liable for the liabilities of the pool. If a member of a pool discontinues its membership in the pool, that party shall be liable only for liabilities accruing prior to the discontinuation of its membership in the pool.

E. As to self-insurance pools established under this section, no pool, employer within a pool, or agent of any pool or employer within a pool may require an employee to be treated by or directed to any specific medical provider subsequent to the employee's initial visit to treat an industrial injury or illness, except as may be required as part of an independent medical examination for an employee making a workers' compensation claim.

F. The industrial commission shall adopt rules necessary for safeguarding the solvency of pools and guaranteeing that injured workers receive benefits as required under this chapter. These rules shall include, at a minimum, matters pertaining to classification and rating, loss reserves, investments, financial security including minimum and combined premiums, combined net worth and other indicia necessary for protection from insolvency, specific and aggregate excess insurance, group homogeneity and assessments necessary for participation in and administration of the workers' compensation system.

41-621.01. Contractors or subcontractors; pooling of property, liability and workers' compensation coverage; exemptions; board of trustees; contract; termination; audit; insolvency

A. Pursuant to section 41-621, subsection D and section 41-622.01 two or more contractors or subcontractors licensed to do work for this state or any political subdivision of this state may with the approval of the department of administration enter into contracts or agreements pursuant to this section for the joint purchase of insurance, to pool retention of their risks for property and liability losses and to provide for the payment of the property loss or claim of liability made against any member of the pool on a cooperative or contract basis with one another or may jointly form a nonprofit corporation or enter into a trust agreement to carry out this section in their behalf directly or by contract with a private party, if the department of administration has determined to sanction such a pool. Two or more contractors may also enter into contracts or agreements pursuant to this section to establish a workers' compensation pool to provide for the payment of workers' compensation claims pursuant to title 23, chapter 6 on a cooperative or contract basis with one another or may jointly form a nonprofit corporation or enter into a trust agreement to carry out this section in their behalf directly or by contract with a private party. A workers' compensation pool established pursuant to this subsection may provide coverage for workers' compensation, employers' liability and occupational disease claims. A workers' compensation pool is subject to approval as a self-insurer by the industrial commission of Arizona pursuant to section 23-961, subsection A, paragraph 2 and is subject to title 23, chapter 6 and rules adopted pursuant to that chapter in addition to the requirements of this section. The industrial commission of Arizona, by rule, resolution or order, may adopt requirements for the administration of a workers' compensation pool under this subsection, including separation or commingling of funds, accounting, auditing, reporting, actuarial standards and procedures.

B. In addition to other authority granted pursuant to this title, two or more contractors or subcontractors licensed to do work for this state or any political subdivision of this state may enter into contracts or agreements for the joint purchase of life insurance, disability insurance, accident insurance or health benefits plan insurance, to pool retention of their risks of loss for life, disability, health or accident claims made against any contractor or subcontractor member of the pool or to jointly provide the health and medical services authorized in section 36-2907. Contractors and subcontractors may establish pools for the purposes of this subsection by any of the following methods:

1. On a cooperative or contract basis.
2. By the formation of a nonprofit corporation.
3. By a contract or intergovernmental agreement with the Arizona health care cost containment system administration.
4. By the execution of a trust agreement directly by the contractors and subcontractors or by contracting with a third party.

C. Contractors or subcontractors of a political subdivision of this state that is a member of a risk retention pool authorized under title 11 may obtain life insurance, disability insurance, accident insurance or health benefits plan insurance coverage directly from that political subdivision if coverage is available and as authorized by section 11-952.01, subsection C.

D. Section 10-11301 does not apply to nonprofit corporations formed pursuant to this section.

E. Chapter 23 of this title does not apply to the procurement of insurance or to the procurement of the services provided for in subsection I, paragraph 8 of this section by any pool established pursuant to this section.

F. Title 43 does not apply to any pool established pursuant to this section. Any pool established pursuant to this section is exempt from taxation under title 43.

G. Each pool shall be operated by a board of trustees consisting of at least five members. The board of trustees of each group shall do all of the following:

1. Establish terms and conditions of coverage within the pool including exclusions of coverage.
2. Ensure that all claims are paid promptly.
3. Take all necessary precautions to safeguard the assets of the group.
4. Maintain minutes of its meetings.
5. Designate an administrator to carry out the policies established by the board of trustees and to provide day to day management of the group and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator.
6. Notify the director of the department of insurance and financial institutions of the existence of the pool and file a copy of the agreement with the director and with the attorney general.
7. If the pool is a workers' compensation pool, file a copy of the agreement with the director of the industrial commission of Arizona.

H. The board of trustees shall not:

1. Extend credit to individual members for payment of a premium except pursuant to payment plans established by the board.
2. Borrow any monies from the group or in the name of the group except in the ordinary course of business.

I. A contract or agreement made pursuant to subsection A of this section shall contain the following:

1. A provision for a system or program of loss control.
2. A provision for termination of membership including either:
 - (a) Cancellation of individual members of the pool by the pool.
 - (b) Election by an individual member of the pool to terminate its participation.
3. A provision requiring the pool to pay all claims for which each member incurs liability during each member's period of membership.
4. A provision stating that each member is not relieved of its liability incurred during the member's period of membership except through the payment of losses by the pool or by the member.
5. A provision for the maintenance of claims reserves equal to known incurred losses and an estimate of incurred but not reported claims.
6. A provision for a final accounting and settlement of the obligations of or refunds to a terminating member to occur when all incurred claims are concluded, settled or paid.
7. A provision that the pool may establish offices where necessary in this state and employ necessary staff to carry out the purposes of the pool.
8. A provision that the pool may retain legal counsel, actuaries, auditors, engineers, private consultants and advisors.
9. A provision that the pool may make and alter bylaws and rules pertaining to the exercise of its purpose and powers.

10. A provision that the pool may purchase, lease or rent real and personal property it deems necessary.

11. A provision that the pool shall enter into a financial services agreement with banks and that it may issue checks in its own name.

J. A pool or a terminating member shall provide at least ninety days' written notice of the termination or cancellation. A workers' compensation pool shall notify the industrial commission of Arizona of the termination or cancellation of a member thirty days before the termination or cancellation of the member.

K. The pool shall be audited annually at the expense of the pool by a certified public accountant, with a copy of the report submitted to the governing body or chief executive officer of each member of the pool and to the director of the department of insurance and financial institutions. The board of trustees of the pool shall obtain an appropriate actuarial evaluation of the claim reserves of the pool including an estimate of the incurred but not reported claims. The department of insurance and financial institutions shall examine each contractor pool once every five years. The director of the department of insurance and financial institutions may examine a contractor pool sooner than five years from the preceding examination if the director has reason to believe that the pool is insolvent. The costs of any examination shall be paid by the pool subject to the examination.

L. If, as a result of the annual audit or an examination by the director of the department of insurance and financial institutions, it appears that the assets of the pool are insufficient to enable the pool to discharge its legal liabilities and other obligations, the director of the department of insurance and financial institutions shall notify the administrator and the board of trustees of the pool of the deficiency and provide the director's list of recommendations to abate the deficiency, including a recommendation not to add any new members until the deficiency is abated. If the pool fails to comply with the recommendations within sixty days after the date of the notice, the director shall notify the chief executive officer or the governing bodies, if any, of the members of the pool, the governor, the president of the senate and the speaker of the house of representatives that the pool has failed to comply with the recommendations of the director.

M. If a pool is determined to be insolvent or is otherwise found to be unable to discharge its legal liabilities and other obligations, each agreement or contract shall provide that the members of the pool shall be assessed on a pro rata basis as calculated by the amount of each member's annual contribution in order to satisfy the amount of deficiency. The assessment shall not exceed the amount of each member's annual contribution to the pool.

N. If a workers' compensation pool fails to comply with title 23, chapter 6 or rules adopted pursuant to that chapter, the director of the industrial commission of Arizona shall immediately notify the director of the department of administration and the director of the department of insurance and financial institutions.

DEPARTMENT OF PUBLIC SAFETY

Title 13, Chapter 1

Amend: R13-1-101, R13-1-201, R13-1-301

Repeal: R13-1-202, R13-1-203, R13-1-204, R13-1-302



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: October 4, 2022

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

FROM: Council Staff

DATE: September 14, 2022

SUBJECT: DEPARTMENT OF PUBLIC SAFETY
Title 13, Chapter 1

Amend: R13-1-101, R13-1-201, R13-1-301

Repeal: R13-1-202, R13-1-203, R13-1-204, R13-1-302

Summary:

This regular rulemaking from the Department of Public Safety (Department) seeks to amend three (3) rules and repeal four (4) rules in Title 13, Chapter 1, Article 1 (Criminal History Records), Article 2 (Arizona Criminal Justice Information System (ACJIS)), and Article 3 (Arizona Crime Statistics).

Specifically, the Department seeks to amend rules R13-1-201 and R13-1-301 to incorporate by reference system security and specification documents from the Department, the Federal Bureau of Investigation and federal code of regulations. A.R.S. § 41-1028(A) states, "[a]n agency may incorporate by reference in its rules, and without publishing the incorporated matter in full, all or any part of a code, standard, rule or regulation of an agency of the United States or of this state or a nationally recognized organization or association, if incorporation of its text in agency rules would be unduly cumbersome, expensive or otherwise inexpedient." The Department indicates the text of the current rules in these articles are a fractional portion of the larger policies, procedures and regulations contained in the incorporated by reference documents. The Department states, due to the complexity of the content of the incorporated by reference

documents and the substantially vast number of pages by which they contain, it would be unduly cumbersome and inexpedient to duplicate these reference documents in their entirety in rule.

Relatedly, the Department is seeking to repeal rules R13-1-202, R13-1-203, R13-1-204, and R13-1-302 as the information in these rules is contained in the material incorporated by reference in rules R13-1-201 and R13-1-301, and is, therefore, no longer necessary.

Additionally, the Department is seeking to amend rule R13-1-101 to update the incorporated by reference federal fingerprint card; define the abbreviation FBI as the Federal Bureau of Investigation; remove the term NIBRS which is no longer used in the rules; and remove all references to “terminal operator certification” and the associated levels as they are contained in the incorporated by reference ACJIS Operating Manual.

Finally, the Department is also seeking to amend R13-1-201 to ensure a criminal justice agency’s system security officer is notified of any security incidents and to specify that the Department will provide criminal justice agencies with information the FBI requires for compliance.

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

The Department 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 Department indicates it did not review or rely on any study in conducting this rulemaking.

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

For Article 1, the Department believes the elimination of redundancy is of benefit to the end user where the end user must only reference a specific document for the complex information. Removal of terms not used in the rules simplifies the rules for the end user. Compliance with the current FBI fingerprinting requirements represents real dollar and personal costs from the impact of crime on Arizona’s neighborhoods, businesses and overall livability. Available to the public on the Department’s website is the Crime in Arizona 2020 report. Maintaining and providing accurate arrest and criminal history information is a positive for the community meeting the Governor’s priority of Protecting our Communities where the Governor has stated “Government’s number one responsibility is keeping its citizens and homeland safe”.

For Article 2 and 3, the Department believes making the rules less cumbersome and efficient through the use of incorporation by reference material will allow the Department to expeditiously update the rules, policies and procedures to conform to federal and state law. It is purely beneficial to the State of Arizona with no adverse direct impact to the economy, small businesses, persons or consumers. There is no added cost as Arizona criminal justice agencies are already complying with the incorporated by reference documents. Cost in the form of Department employee work hours will be reduced through the leveraging of the expedited rulemaking process for future updates.

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?**

For Article 1, the Department is unable to identify any other less costly or less intrusive methods to achieve the purpose of the proposed rule changes at this time. The fingerprint card is prescribed by the federal government and used by all federal agencies and all other states for system standardization. The removal of redundant information contained in the incorporated by reference documents is by itself the definition of the least possible method.

For Article 2 and 3, the Department is unable to identify any other less costly or less intrusive methods to achieve the purpose of the proposed rule changes at this time. Reducing rule text to the more efficient incorporated by reference option is seen as the least intrusive and least costly method and can determine no other way to make the rule text more concise, more clear and less cumbersome than what is proposed in the rulemaking. Cost is monetized as employee time for this regular rulemaking; however, the benefit is reduced rulemaking time in the future through the use of the expedited rulemaking process to primarily update incorporated by reference documents.

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

All Arizona law enforcement agencies will be minimally affected by the proposed change to the rules. The rules are currently being enforced and compliance is being regularly audited either by onsite or other methods by the Department.

The Department and other agencies in Arizona will directly benefit from the rule through a simplified process of more concise rules and current incorporated by reference material.

All Arizona criminal justice agencies and their employees who access the Arizona Criminal Justice Information System (ACJIS) Network and who provide crime statistics will be directly affected and directly benefit from the proposed change to the rules.

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

The Department indicates it amended Section 2 of the Notice of Final Rulemaking Preamble to correct a typographical error relating to the Department's statutory authority.

Additionally, the Department amended rule R13-1-201(A) to make a grammatical change to the incorporated by reference statement.

Council staff does not believe these changes between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking make the rules “substantially different” as described in A.R.S. § 41-1025.

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

The Department indicates it received no comments regarding this rulemaking and no one attended the oral proceeding held on August 2, 2022.

9. 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), if an agency proposes 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, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

The Department indicates it requires an individual Terminal Operator Certification (TOC) for Arizona criminal justice agency employees who access, use, interpret, create, amend and delete Arizona Crime Information Center (ACIC) and National Crime Information Center (NCIC) records and criminal history record information in state and federal databases. The Department indicates the TOC is a requirement by the FBI and the Department is audited on compliance.

The Department indicates that the TOC ensures an employee is fully aware of their responsibilities to protect criminal justice information and a person’s private criminal history information under Arizona law where its use is strictly for a legitimate criminal justice purpose. Due to the substantial impact to a person’s life and livelihood and the public at large, the Department states a general permit cannot be issued to a criminal justice agency. The Department indicates it needs a mechanism to enforce database and system integrity standards and remove employees who do not meet those standards. As such, it appears issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements. *See* A.R.S. § 41-1037(A)(3). Additionally, as the TOC is required by the FBI, it appears a general permit is prohibited by federal law. *See* A.R.S. § 41-1037(A)(1). Therefore, the TOC appears to meet several exceptions to the requirement for a general permit and Council staff believes the Department is in compliance with A.R.S. § 41-1037.

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 indicates that the rules are not more stringent than corresponding federal law, specifically, 28 CFR Part 20, dated July 1, 2020.

11. Conclusion

This regular rulemaking from the Department seeks to amend three (3) rules and repeal four (4) rules in Title 13, Chapter 1, Article 1 (Criminal History Records), Article 2 (Arizona Criminal Justice Information System (ACJIS)), and Article 3 (Arizona Crime Statistics).

Specifically, the Department seeks to amend rules R13-1-201 and R13-1-301 to incorporate by reference system security and specification documents from the Department, the Federal Bureau of Investigation and federal code of regulations. Due to the complexity of the content of the incorporated by reference documents and the substantially vast number of pages by which they contain, the Department indicates it would be unduly cumbersome and inexpedient to duplicate these reference documents in their entirety in rule. Relatedly, the Department is seeking to repeal rules R13-1-202, R13-1-203, R13-1-204, and R13-1-302 as the information in these rules is contained in the material incorporated by reference in rules R13-1-201 and R13-1-301, and is, therefore, no longer necessary.

Additionally, the Department is seeking to amend rule R13-1-101 to update the incorporated by reference federal fingerprint card; define the abbreviation FBI as the Federal Bureau of Investigation; remove the term NIBRS which is no longer used in the rules; and remove all references to “terminal operator certification” and the associated levels as they are contained in the incorporated by reference ACJIS Operating Manual.

Finally, the Department is also seeking to amend R13-1-201 to ensure a criminal justice agency’s system security officer is notified of any security incidents and to specify that the Department will provide criminal justice agencies with information the FBI requires for compliance.

Pursuant to A.R.S. § 41-1032(A), the proposed amendments will be effective sixty (60) days after the rule package is filed with the Office of the Secretary of State if approved by the Council.

Please note, due to the size of the incorporated by reference materials, the documents are not included in the final materials for the Council’s consideration. However, the materials are available from Council staff upon request.

Council staff recommends approval of this rulemaking.



ARIZONA DEPARTMENT OF PUBLIC SAFETY
2102 WEST ENCANTO BLVD. P.O. BOX 6638 PHOENIX, ARIZONA 85005-6638 (602) 223-2000

“Courteous Vigilance”

DOUGLAS A. DUCEY **HESTON SILBERT**
Governor Director

August 8, 2022

Ms. Nicole Sornsins, Chair
The Governor’s Regulatory Review Council
100 N 15th Ave, Ste 402
Phoenix, AZ 85007

Dear Ms. Sornsins,

The Department of Public Safety submits a *Notice of Final Rulemaking* for Arizona Administrative Code Title 13, *Public Safety*, Chapter 1, *Criminal Identification Section*, Sections 101, 102, 201-204, 301 and 302 for review and approval by the Council.

The following information is provided pursuant to R1-6-201:

1. Close of Record Date: The rulemaking record was closed on Wednesday, August 3, 2022, pursuant to the *Notice of Proposed Rulemaking* following a period for public comment and an oral proceeding. The oral proceeding was held on Tuesday, August 2, 2022, with no attendees from the public and no written comments received. The notice was filed pursuant to A.R.S. § 41-1047 with the Arizona Rules Oversight Committee on August 8, 2022.
2. Relation to Five-Year Review Report: This rulemaking is related to a five-year review approved by the Council on August 7, 2018.
3. Establishment of new fees: This rulemaking does not establish new fees.
4. Establishment of fee increase: This rulemaking does not establish a fee increase.
5. Request for immediate effective date under A.R.S. § 41-1032: The Department is not requesting an immediate effective date.
6. Evaluations of studies related to the rulemaking: The preamble indicates no external studies related to the rulemaking were evaluated.
7. Necessity of Full-time Employees: The rulemaking does not require an increase in full-time employees to implement the rules.

8. Written Comments Received:

The Department did not receive any oral or written comments on the rulemaking.

9. Incorporated by Reference Material:

- a. ACJIS Operating Manual, dated September 2021
- b. FBI Criminal Justice Information System Security Policy, dated June 2020
- c. FBI NCIC Operating Manual, dated August 2021
- d. FBI Interstate Identification Index/National Fingerprint File Manual, dated March 2017
- e. 28 CFR Part 20, dated July 1, 2020
- f. Arizona Incident-based Reporting System Technical Specification, dated March 2020
- g. FBI 2021.1 National Incident-based Reporting System User Manual, dated April 2021
- h. FBI 2019.2.1 National Incident-based Reporting System Technical Specifications, dated June 2020
- i. FBI standard fingerprint card Form FD-258, dated September 9, 2013

10. List of Additional Documents:

- a. *Notice of Final Rulemaking* including the Preamble and rule text.
- b. Department's rulemaking waiver request letter.
- c. Governor's Office initial and secondary rulemaking waiver approvals.
- d. Economic impact statement.
- e. Filing with the Arizona Rules Oversight Committee.

Sincerely,



Colonel Heston Silbert
Director

Enc. 14

NOTICE OF FINAL RULEMAKING
TITLE 13. PUBLIC SAFETY
CHAPTER 1. DEPARTMENT OF PUBLIC SAFETY – CRIMINAL IDENTIFICATION
SECTION

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R13-1-101 | Amend |
| R13-1-201 | Amend |
| R13-1-202 | Repeal |
| R13-1-203 | Repeal |
| R13-1-204 | Repeal |
| R13-1-301 | Amend |
| R13-1-302 | Repeal |
- 2. Citations to the agency’s statutory authority to include the authorizing statute (general) and the implementing statute (specific):**
- Authorizing statute: A.R.S. § 14-1713(A)(4)
Implementing statute: A.R.S. §§ 41-1750(G)(7),(H),(R),(V); 41-2205(A) and 41-2206
- 3. The effective date of the rules:**
- The rules will be effective under the normal effective date of 60 days after filing with the Secretary of State.
- 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 Department did not select an earlier effective date.
- 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):**
- The Department did not select a later effective date.

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: 28 A.A.R. 1491, June 24, 2022

Notice of Proposed Rulemaking: 28 A.A.R. 1475, June 25, 2022

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

Name: Melanie Veilleux, Manager, Criminal Justice Services Bureau

Address: Arizona Department of Public Safety

POB 6638, MD 3230

Phoenix, AZ 85005-6638

Telephone: (602) 223-5097

E-mail: mveilleux@azdps.gov

And

Name: Paul Swietek, Police Planner

Address: Arizona Department of Public Safety

POB 6638, MD1205

Phoenix, AZ 85005-6638

Telephone: (602) 223-2049

E-mail: pswietek@azdps.gov

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

Article 1

Section 101

This section was amended to update:

(11) The incorporated by reference federal fingerprint card.

(16) Define the abbreviation FBI as the Federal Bureau of Investigation.

(21) Remove the term NIBRS which is no longer used in the rules.

(31-36) Remove all references to terminal operator certification and the associated levels were removed as they are contained in the incorporated by reference ACJIS Operating Manual.

Articles 2 and 3

A.R.S. § 41-1028(A) states “An agency may incorporate by reference in its rules, and without publishing the incorporated matter in full, all or any part of a code, standard, rule or regulation of an agency of the United States or of this state or a nationally recognized organization or association, if incorporation of its text in agency rules would be unduly cumbersome, expensive or otherwise inexpedient.”

Articles 2 and 3, Sections 201 and 301, were amended to incorporate by reference system security and specification documents from the Department, the Federal Bureau of Investigation and federal code of regulations. The text of the current rules in these articles are a fractional portion of the larger policies, procedures and regulations contained in the incorporated by reference documents. Due to the complexity of the content of the incorporated by reference documents and the substantially vast number of pages by which they contain, it would be unduly cumbersome and inexpedient to duplicate these reference documents in rule. Only policies, procedures and regulations not contained within the incorporated by reference documents will exist in rule. Reference to state statutes will not exist in rule if the Department does not have any information to further clarify the statute; the statute will stand on its own. All text wholly or partially duplicative to federal or state statute or to the incorporated by reference documents is repealed.

Section 201 was amended to ensure the agency’s system security officer is notified of any security incidents. Specifies to agency’s the Department shall provide information the FBI requires for compliance.

Section 202 is being repealed as the information is contained in the incorporated by reference documents.

Section 203 addresses a course of action in a 2018 five-year review pursuant to A.R.S. § 41-1056. Section 203 is being repealed as the information is contained in the incorporated by reference documents and therefore the course of action to amend the section is no longer relevant.

Section 204 is being repealed as the information is contained in the incorporated by reference documents.

Section 302 is being repealed as the information is contained in the incorporated by reference documents.

Pursuant to the *Notice of Proposed Rulemaking*, a public comment meeting was held on August 2, 2022 with no members of the public attending. Also pursuant to the *Notice of Proposed Rulemaking*, the close of record occurred on August 3, 2022 with no written comments being received by the Department.

The Department received an initial rulemaking waiver approval pursuant to Executive Order 2022-01 on May 18, 2022 and a secondary rulemaking waiver approval on August 4, 2022 by Megan Fitzgerald, Public Safety Policy Advisor to the Governor.

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 Department 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. The rulemaking does not diminish previous grants of authority of political subdivision of this state.

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

The Department believes making the rules less cumbersome and efficient through the use of incorporation by reference will allow the Department to expeditiously update the rules, policies and procedures to conform to federal and state law. It is purely beneficial to the State of Arizona with no adverse direct impact to the economy, small businesses, persons or consumers. There is no added cost as Arizona criminal justice agencies are already

complying with the incorporated by reference documents. Cost in the form of Department employee work hours will be reduced through the leveraging of the expedited rulemaking process for future updates.

The Department believes the amendments to the administrative rules are beneficial to the state of Arizona with no adverse impact to the economy, small businesses, or consumers. There are real dollar and personal costs from the impact of crime on Arizona's neighborhood, businesses and overall livability. Refer to the Department's *Crime in Arizona 2020* report. Maintaining and providing accurate arrest and criminal history information is a positive for the community meeting the Governor's priority of *Protecting our Communities* where "Government's number one responsibility is keeping its citizens and homeland safe."

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

There are no changes between the proposed notice and the final notice. There was no supplemental notice.

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

The Department conducted a public comment meeting on August 2, 2022 and no members of the public attended. The Department did not receive any written comments at the time of the close of the record on August 3, 2022 as stated in the proposed notice.

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 Department does require an individual Terminal Operator Certification (TOC) for Arizona criminal justice agency employees who access, use, interpret, create, amend and delete Arizona Crime Information Center (ACIC) and National Crime Information Center (NCIC) records and criminal history record information in state

and federal databases. TOC is a requirement by the Federal Bureau of Investigation (FBI) and the Department is audited on compliance.

The TOC ensures an employee is fully aware of their responsibilities to protect criminal justice information and a person's private criminal history information under Arizona law where it's use is strictly for a legitimate criminal justice purpose.

The TOC is also a mechanism to ensure the integrity of databases in several ways.

First, criminal history is fingerprint driven and any erroneous fingerprint identifications may cause file merges (taking two or more different people and merging them to as one person with aliases) or in the case of a latent crime scene print could cause the wrong person to be arrested impacting the lives of the persons involved. This could affect a person's ability to apply for a teacher clearance card, concealed weapons permit, or other license or permit issued by the state. Erroneous merging of records or other data entry errors could also affect arrest warrants and court sentencing decisions. This affects both the state and FBI databases and results in a substantial amount of time for the Department, FBI and other criminal justice agencies to research and correct.

Secondly, employees entering and updating arrest warrants, stolen/wanted items/articles, and criminal history dispositions among other criminal justice information have the ability to affect unconnected people. For example, an error entering a stolen license plate could result in an unknowing person being stopped and investigated by police increasing risk. Or allow a wanted person/object to be erroneously released if the information entered/updated/deleted is not accurate.

Third, database and cyber security needs to be maintained at a network level to prevent unauthorized computer hacking or other unauthorized access. Arizona criminal justice employees who maintain the network systems and architecture have access to the information contained in the database. Therefore, those employees

should also be certified to protect criminal justice history information.

The listings above are snippet examples of the harm that could occur if employees are not individually responsible to maintain standards. Due to the substantial impact to a person's life and livelihood and the public at large, a general permit cannot be issued to a criminal justice agency. The Department needs a mechanism to enforce database and system integrity standards and remove employees who do not meet those standards.

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:

28 CFR Part 20, dated July 1, 2020. The rules are not more stringent than the federal law.

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

The Department did not receive an analysis.

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

Section 101

Under *classifiable fingerprints*, the FBI Standard Fingerprint Form FD-258, dated September 9, 2013.

Section 201

1. ACJIS Operating Manual, dated September 2021.
2. FBI Criminal Justice Information System Security Policy, dated June 2020.
3. FBI NCIC Operating Manual, dated August 2021.
4. FBI Interstate Identification Index/National Fingerprint File Manual, dated March 2017.
5. 28 Code of Federal Regulations Part 20, dated July 1, 2020.

Section 301

1. Arizona National Incident-Based Reporting System Technical Specifications, dated March 2020.
2. FBI 2021.1 National Incident-Based Reporting System User Manual, dated April 2021.
3. FBI 2019.2.1 National Incident-Based Reporting System Technical Specifications, dated June 2020.

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:

These rules were not previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 13. PUBLIC SAFETY
CHAPTER 1. DEPARTMENT OF PUBLIC SAFETY – CRIMINAL IDENTIFICATION
SECTION
ARTICLE 1. CRIMINAL HISTORY RECORDS

Section

R13-1-101 Definitions

ARTICLE 1. CRIMINAL HISTORY RECORDS

R13-1-101. Definitions

In addition to the definitions in A.R.S. §§ 41-1750 and 41-2201, the following definitions apply to this Chapter:

1. “Access authorization list” means a list that contains the names of agency personnel who are authorized to receive information directly or indirectly from the ACJIS network.
2. “ACJIS” means the Arizona Criminal Justice Information System, a statewide network housing various databases on persons and property in this state. The ACJIS network is maintained by the Department and is available to authorized local, state, and federal criminal justice agencies.
3. “ADRS” means the Arizona Disposition Reporting System, which is maintained by the Department and supports electronic submission of disposition information to the central state repository.
4. “ALETs” means the Arizona Law Enforcement Telecommunications System.
5. “Arizona Computerized Criminal History” means a criminal history record kept by the Department in a database of offenders arrested in this state.
6. “Arresting agency case number” means a unique combination of 15 numbers and letters used to identify a criminal justice agency’s case number such as the Department case number, Department report number, or case report number. The first three characters are the AZAFIS-assigned alpha characters that identify the arresting agency.
7. “AZAFIS” means the Arizona Automated Fingerprint Identification System maintained by the Department that stores state-level arrest fingerprints and related information.
8. “AZAFIS Image Scanner” means the scanning system that scans and transmits ink and roll arrest fingerprint records.
9. “AZAFIS Livescan” means the electronic system that captures and transmits arrest information and fingerprints.
10. “CHRI” means Criminal History Record Information.
11. “Classifiable Fingerprints” means fingerprint impressions that meet the criteria of the FBI as contained in Form FD-258 (~~5-11-99~~) (9-9-2013), U.S. Government Printing Office: 2004-304-373/80029, incorporated by reference, available from the Department and the

FBI (Attn: Logistical Support Unit (LSU), CJIS Division, 1000 Custer Hollow Road, Clarksburg, WV 26306). This incorporation contains no future editions or amendments.

12. "Date of arrest" means the date a person is taken into custody using the MMDDCCYY format as indicated in Exhibit A.
13. "Date of birth" means the subject's date of birth using MMDDCCYY format as indicated in Exhibit A.
14. "Department" means the Arizona Department of Public Safety.
15. "Disposition date" is the date of final disposition of a charge.
16. "FBI" means the Federal Bureau of Investigation.
- ~~16.~~17. "Hot files" means records entered into ACJIS. These records include those regarding wanted persons and stolen vehicles.
- ~~17.~~18. "Juvenile fingerprinted" means identification signifying that an individual is a juvenile on an arrest fingerprint card if the juvenile is being remanded as an adult.
- ~~18.~~19. "Law Enforcement Agency" means a municipal, county, or state agency with powers of arrest.
- ~~19.~~20. "LSI" means local subject identifier, a unique combination of 15 numbers and letters used by local law enforcement agencies to identify an individual. It is the local equivalent of a State Identification (SID) number. The first three characters are the AZAFIS-assigned alpha characters that identify the agency.
- ~~20.~~21. "NCIC" means the National Crime Information Center maintained by the FBI, a national repository of files on persons and property relating to a crime.
- ~~21.~~ ~~"NIBRS" means the National Incident-Based Reporting System, a system designed to collect data on each crime occurrence and each incident and arrest within that occurrence for 22 crime categories.~~
22. "NLETS" means the National Law Enforcement Telecommunications System, a message switching system for the interstate exchange of criminal justice information.
23. "Offender-based Tracking System" means a computer system database that indexes information from selected Arizona Criminal Justice Information System data files.
24. "Offense" means an offense listed in the Arizona Revised Statutes or a city ordinance that is used to arrest an offender.

25. "Offense type" means a designation that indicates whether an offense is a felony or a misdemeanor.
26. "ORI" means a unique identifier assigned by the FBI to an agency.
27. "PCN" means Process Control Number.
28. "Personal identifiers" means a subject's sex, race, height, weight, hair color, and eye color.
29. "Place of birth" means the state or country in which a subject of record was born.
30. "State Identification Number (SID)" means an identification number that is assigned by the Department to an individual whose set of arrest fingerprints has been submitted to AZAFIS.
31. ~~"Terminal Operator Certification Level A" means a terminal operator who is authorized to access the ACJIS network for entering, updating, clearing, or canceling records; conducting inquiries; and interpreting responses.~~
32. ~~"Terminal Operator Certification Level B" means a terminal operator who is authorized to inquire into the ACJIS network and interpret responses.~~
33. ~~"Terminal Operator Certification Level C" means a terminal operator who is authorized to inquire into the ACJIS/NCIC hot files.~~
34. ~~"Terminal Operator Certification Level D" means technical personnel who are authorized to view information obtained from the ACJIS network.~~
35. ~~"Terminal Operator Certification Level F" means a terminal operator who is authorized to inquire into, enter information into, or modify information in the ADRS.~~
36. ~~"TOC" means Terminal Operator Certification.~~

TITLE 13. PUBLIC SAFETY
CHAPTER 1. DEPARTMENT OF PUBLIC SAFETY – CRIMINAL IDENTIFICATION
SECTION
ARTICLE 2. ACJIS NETWORK

Section

- R13-1-201 ACJIS Security Measures
- ~~R13-1-202 Arizona Criminal Justice Information System Training and Proficiency Guidelines~~
- ~~R13-1-203 Terminal Operator Certification Training or Criminal Justice Practitioner's Program~~
- ~~R13-1-204 Procedures for and Restrictions on Dissemination of Information~~

ARTICLE 2. ACJIS NETWORK

R13-1-201. ACJIS Security Measures

A. All criminal justice agencies that collect, store, disseminate, or access criminal justice information or criminal history record information from the ACJIS or NCIC shall ~~sign and return to the Department's Access Integrity Unit an ACJIS User Agreement~~ comply with the policies, rules and regulations as outlined in the following publications that are incorporated by reference, available from the Department's Access Integrity Unit at 2222 W Encanto Blvd, Phoenix, AZ 85009, the Federal Bureau of Investigation at 1000 Custer Hollow Rd, Clarksburg, WV 26306 and the U.S. Government Publishing Office www.govinfo.gov and include no future additions or amendments: The ACJIS User Agreement states that the agency will follow state and federal requirements as specified in R13-1-204(A) relating to the collection, storage, dissemination, and access of criminal justice information and criminal history record information obtained directly or indirectly from the ACJIS.

1. ACJIS Operating Manual, dated September 2021;
2. FBI Criminal Justice Information System Security Policy, dated June 2020;
3. FBI NCIC Operating Manual, dated August 2021;
4. FBI Interstate Identification Index/National Fingerprint File Manual, dated March 2017;
and,
5. 28 Code of Federal Regulations Part 20, dated July 1, 2020.

B. A criminal justice agency accessing the ACJIS network shall meet the following security guidelines:

1. Access and dissemination of information from the ACJIS network is limited to criminal justice agencies for the administration of criminal justice or for criminal justice employment.
2. An agency that enters records into the ACJIS network is responsible for the accuracy, timeliness, and completeness of the record entries.
3. An agency shall have an ACJIS misuse policy that outlines the sanctions imposed on agency personnel who misuse ACJIS.
4. An agency shall ensure that agency equipment connected to the ACJIS network is fully compatible with existing ACJIS computer equipment and upgraded as necessary to remain compatible with ACJIS configurations and architecture.

5. An agency shall ensure that agency personnel maintain appropriate operator certification levels as specified in ~~R13-1-203~~ the ACJIS Operating Manual.

C. A criminal justice agency that interfaces its record management system with the ACJIS network shall meet the following interface standards and security requirements as set by the Department:

1. Provide to the Department a complete and accurate schematic depicting the of agency network and hardware configuration;
2. Ensure ~~that~~ there are security controls to prevent unauthorized access to ACJIS information;
3. Follow user identification and password configurations specified by the Department;
4. Establish a process to review system logs and store the logs for one year; and
5. ~~Sign the Department's ACJIS interface addendum agreeing to follow the standards in this subsection~~ Support policy compliance and ensure the Department Information Security Officer is promptly informed of security incidents.

D. The Department shall provide criminal justice agencies with information received from the FBI that the Department determines is necessary to comply with this Section.

~~R13-1-202. Arizona Criminal Justice Information System Training and Proficiency Guidelines~~

~~A criminal justice agency that accesses the ACJIS Network shall follow the ACJIS terminal operator certification (TOC) testing guidelines developed and maintained by the Department. The guidelines are:~~

1. ~~Each agency with terminal access to the ACJIS Network shall appoint an ACJIS System Security Officer (SSO) to act as liaison to the Department's CJIS Systems Officer.~~
2. ~~The agency SSO shall:~~
 - a. ~~Oversee the development and maintenance of the agency's ACJIS Network and TOC training outlines;~~
 - b. ~~Oversee the Terminal Operator Certification Training Program;~~
 - c. ~~Oversee the Criminal Justice Practitioner's Training Program; and~~

- d. ~~Ensure that all agency terminal operators pass a test by obtaining at least a score of 70 percent for the appropriate Terminal Operator Certification Level before accessing the ACJIS.~~

~~R13-1-203. Terminal Operator Certification Training or Criminal Justice Practitioner's Program~~

- ~~A. The SSO shall ensure that the Terminal Operator Certification Training Programs for terminal operator levels A, B, C, and D contain the following areas of training as applicable to the certification level:
 1. Privacy and security of the ACJIS/NCIC system;
 2. Record inquiry and entry procedures on all databases;
 3. Validation procedures;
 4. Hit confirmation procedures;
 5. Dissemination procedures;
 6. Terminal operator certification procedures;
 7. Use of ALETS and the NLETS; and
 8. Viewing the ACJIS operations overview video.~~
- ~~B. The agency SSO shall ensure that the Criminal Justice Practitioner's Program includes, at a minimum, viewing the ACJIS operations overview video.~~

~~R13-1-204. Procedures for and Restrictions on Dissemination of Information~~

- ~~A. A criminal justice agency shall follow the terms and conditions for dissemination of criminal justice or criminal history record information obtained from the ACJIS network outlined in:
 1. A.R.S. § 41-1750;
 2. 28 CFR Part 20 dated July 2004, incorporated by reference, available from the Department and the FBI at 1000 Custer Hollow Road, Clarksburg, WV 26306. This incorporation by reference contains no future editions or amendments; and
 3. The ACJIS User Agreement as stated in R13-1-201;~~

~~B. A criminal justice agency shall provide an access authorization list to the Department. The Department shall disseminate criminal justice or criminal history record information only to individuals on the agency's access authorization list. The authorization list shall include:~~

- ~~1. Name of agency;~~
- ~~2. Name of authorized individual;~~
- ~~3. Date of birth of authorized individual;~~
- ~~4. Date of hire of authorized individual, if applicable;~~
- ~~5. Terminal operator certification number of authorized individual, if applicable; and~~
- ~~6. Phone numbers of authorized individual.~~

TITLE 13. PUBLIC SAFETY

CHAPTER 1. DEPARTMENT OF PUBLIC SAFETY – CRIMINAL IDENTIFICATION

SECTION

ARTICLE 3. ARIZONA CRIME STATISTICS

Section

R13-1-301 Submittal of ~~Hate~~ Uniform Crimes Crime Information Statistics

~~R13-1-302 Submittal of Uniform Crime Information~~

ARTICLE 3. ARIZONA CRIME STATISTICS

R13-1-301. Submittal of ~~Hate~~ Uniform Crimes-Crime Information-Statistics

- A. A law enforcement agency shall submit ~~hate~~ uniform crime information to include crimes that manifest evidence of prejudice based on race, color, religion, national origin, sexual orientation, gender or disability and the Department as outlined in the following publications that are incorporated by reference, available from the Department's Access Integrity Unit at 2222 W. Encanto Blvd, Phoenix, AZ 85009 and the FBI at 1000 Custer Hollow Rd., Clarksburg, WV 26306, and include no future editions or amendments:
1. ~~Federal Bureau of Investigation Training Guide for Hate Crime Data Collection, Appendix C; and Federal Bureau of Investigation Hate Crime Data Collection Guidelines, dated October 1999~~ Arizona National Incident-Based Reporting System Technical Specifications, dated March 2020.
 2. ~~Federal Bureau of Investigation National Incident Based Reporting System Handbooks: FBI 2021.1 National Incident-Based Reporting System User Manual, dated April 2021.~~
 - a. ~~Uniform Crime Reporting Handbook, NIBRS Edition, dated 1992;~~
 - b. ~~Volume 1 Data Collection Guidelines, dated August 2000;~~
 - c. ~~Volume 2 Data Submission Specifications, dated May 1992;~~
 - d. ~~NIBRS Addendum for Submitting LEOKA data, dated October 2002; and~~
 - e. ~~Volume 4 Error Message Manual, dated December 1999.~~
 3. FBI 2019.2.1 National Incident-Based Reporting System Technical Specifications, dated June 2020.
- B. The Department shall provide law enforcement agencies with information contained in the FBI's Uniform Crime Reporting State Program Bulletins and any other directives ~~that~~ the Department determines is necessary to comply with this Section.

R13-1-302. Submittal of ~~Uniform Crime Information~~

- ~~A. A law enforcement agency shall submit uniform crime information to the Department as outlined in the following publications that are incorporated by reference, available from the Department's Access Integrity Unit and the FBI at 1000 Custer Hollow Road, Clarksburg, West Virginia, and contains no future editions or amendments:~~

1. ~~Federal Bureau of Investigation Uniform Crime Reporting Handbook, dated 2004;~~
 2. ~~Federal Bureau of Investigation National Incident Based Reporting System Handbooks incorporated in R13-1-301(A)(2).~~
- B.** ~~The Department shall provide law enforcement agencies with information contained in the FBI's Uniform Crime Reporting State Program Bulletins that the Department determines is necessary to comply with this Section.~~

Economic, Small Business and Consumer Impact Statement

Title 13. Public Safety
Chapter 1. Department of Public Safety - Criminal
Identification Section
Articles. 1 through 3

June 7, 2022

PREAMBLE

1. An identification of the proposed rulemaking, including all of the following:

Article 1

The Department is proposing amending R13-1-101.

Articles 2 and 3

The Department is proposing repealing rules 202, 203, 204 and 302. The Department is proposing amending rules 101, 201 and 301 by incorporating by reference state manuals and federal laws and procedures which govern the programs associated with those rules.

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

Article 1

The Department is updating the incorporated by reference Federal Bureau of Investigation fingerprint card. This will ensure agencies are using the most current version to conform to federal and state standards. Terms no longer used in the rules as the information is contained in the incorporated by reference documents were removed to reduce confusion and make the rules concise.

Articles 2 and 3

The rules governing the Arizona Criminal Justice Information System (ACJIS) networks and Arizona Crime Statistics (ACS) will be determined by the policies established in the various incorporated by reference manuals maintained by the Department and the Federal Bureau of Investigation and by federal and state statutes. By implementing the rule amendments, the Department will be able to rapidly adjust requirements when state and federal policies or laws are changed through the expedited rulemaking process pursuant to A.R.S. § 41-1027. The complexity of the material and the volume size of material are too cumbersome to efficiently draft in rule.

(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.

Article 1

The Department believes that not amending these rules could result in inconsistencies across its biometric and computerized criminal history reporting systems, agencies not being compliant with these changes, and the Department not being able to hold agencies accountable. Not meeting federal requirements creates the possibility of sanctions against the Department and/or other state, county, and local agencies who use the services provided by the Department. Removing terms no longer used in the rules reduces confusion and makes the rules more concise for the user.

Articles 2 and 3

The Department believes that not changing the rules could result in Arizona criminal justice agencies not being able to comply with changes and the Department not being able to hold agencies accountable during the audit process when the ACJIS and ACS programs. Through the use of incorporation by reference material, the Department can leverage the expedited rulemaking process to minimize the risk of delaying changes to meet federal and state requirements. Not meeting federal requirements creates the possibility of sanctions against the Department and other Arizona criminal justice agencies who use the ACJIS and ACS.

(c) The estimated change in frequency of the targeted conduct expected from the rule change.

Article 1

Changes to federal and state statutes or the federal and state rules regarding the operation of the Department's biometric and computerized criminal history reporting systems do not occur on a predictable frequency. The Department reviews all governing documents annually to ensure compliance with the federal and state laws.

Articles 2 and 3

Changes to federal and state policy do not occur on a predictable frequency. The Department reviews and will continue to review all governing documents annually to ensure compliance with federal and state laws. Making this change to incorporation by reference will ensure the Department is able to react quickly when the Department's policies and procedures are out of alignment with the federal and state law.

2. A brief summary of the information included in the economic, small business and consumer impact statement.

Article 1

The Department believes the elimination of redundancy is of benefit to the end user where the end user must only reference a specific document for the complex information. Removal of terms not used in the rules simplifies the rules for the end user. Compliance with the current FBI fingerprinting requirements represents real dollar and personal costs from the impact of crime on Arizona's neighborhood, businesses and overall livability. Available to the public on the Department's website is the *Crime in Arizona 2020* report. Maintaining and providing accurate arrest and criminal history information is a positive for the community meeting the Governor's priority of *Protecting our Communities* where the Governor has stated "Government's number one responsibility is keeping its citizens and homeland safe".

Articles 2 and 3

The Department believes making the rules less cumbersome and efficient through the use of incorporation by reference material will allow the Department to expeditiously update the rules, policies and procedures to conform to federal and state law. It is purely beneficial to the State of Arizona with no adverse direct impact to the economy, small businesses, persons

or consumers. There is no added cost as Arizona criminal justice agencies are already complying with the incorporated by reference documents. Cost in the form of Department employee work hours will be reduced through the leveraging of the expedited rulemaking process for future updates.

3. If the economic, small business and consumer impact summary accompanies a proposed rule or a proposed expedited rule, 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.

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Address: Arizona Department of Public Safety
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And

Name: Paul Swietek, Police Planner
Address: Arizona Department of Public Safety
PO Box 6638, Mail Drop 2105
Phoenix, AZ 85005
Telephone:(602) 223-2049
E-mail: pswietek@azdps.gov

MAIN BODY

1. An identification of the proposed rulemaking.

Article 1

The Department is proposing amending R13-1-101 by incorporating by reference documents and adjusting the rule content to current operating practices and changes to law.

Articles 2 and 3

This rulemaking is related to policies regarding the use of ACJIS and ACS required by federal and state laws and policies. Arizona criminal justice agencies have been complying with federal and state law and Department policies for decades. Pursuant to FBI security policy, failure of the state and/or criminal justice agency to follow the policy may result in access to the national systems being terminated. The rule change primarily repeals text and rules which have information that is duplicative to the existing law and manuals by which agencies are already complying with. These amendments to incorporate by reference various state and federal manuals and federal law is intended to meet the spirit of A.R.S. § 41-1028(A) to make the rules less cumbersome and more expedient. Through incorporation by reference, the Department can update policies and procedures for Arizona criminal justice agencies expeditiously through the expedited rulemaking process pursuant to A.R.S. § 41-1027 in the future.

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

Article 1

All Arizona law enforcement agencies will be minimally affected by the proposed change to the rules. The rules are currently being enforced and compliance is being regularly audited either by onsite or other methods by the Department.

The Department and other agencies in Arizona will directly benefit from the rule through a simplified process of more concise rules and current incorporated by reference material.

Articles 2 and 3

All Arizona criminal justice agencies and their employees who access the ACJIS Network and who provide crime statistics will be directly affected and directly benefit from the proposed change to the rules.

3. A cost benefit analysis of the following:

Article 1

The Department believes the elimination of the redundancy and indicating the most current fingerprint card to use is purely beneficial to the state of Arizona with no adverse impact to the economy, small businesses, or consumers. There is no added cost.

Articles 2 and 3

The Department believes the streamlining of rules to incorporation by reference eliminates redundancy and provides more clarity being purely beneficial to the State of Arizona and criminal justice information users with no adverse impact to the economy, small businesses, or consumers. There is no added cost, as the Arizona Criminal Justice Information System (ACJIS) Operating Manual is reviewed and updated annually as needed. The Department will obtain a cost reduction by no longer needing to conduct regular rulemakings to update rule text to match text in statute or manual and reduce the rulemaking time through the expedited rulemaking process to update incorporated by reference documents. The incorporated by reference documents are substantially large and complex and drafting them into rule is not expedient. Arizona criminal justice agencies will see a cost reduction through no longer having to cross-reference rule text to manual text and determine which is more correct and current reducing time and confusion.

- 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.**

Article 1

There is no cost to implement or enforce the proposed rule change. The Department will benefit from the elimination of rule text redundancy to the incorporated by reference documents.

Articles 2 and 3

There is no cost to the Department or other Arizona criminal justice agencies to implement or enforce the proposed rule change. The agencies are already complying with the federal and state statutes and the Department's manuals on this subject. As stated in Item #3 above, the Department will benefit from the elimination of the redundant rule text. No new full-time employees are required.

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

Article 1

The Department believes the rule change will not result in any cost increases to any subdivision of this state. Agencies will benefit from having concise and clear rules and policies as well as standardized, accurate criminal history information through the use of current fingerprint cards.

Articles 2 and 3

The Department believes the rule change will not result in any cost increases to any subdivision of this state. Arizona criminal justice agencies will benefit from having all

rules and policies incorporated into the various manuals they must already follow instead of also having to refer to administrative rules. Incorporation by reference creates a less cumbersome process for users by reducing the need to read both rules and manuals duplicating the same information.

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

Article 1

The Department does not anticipate businesses will be directly affected by the proposed rule changes. The rules only affect criminal justice agencies.

Articles 2 and 3

The Department does not anticipate businesses will be directly affected by the proposed rule change. Only Arizona criminal justice agencies using the ACJIS network are affected; such as, law enforcement agencies, prosecutors and courts. These entities are already in compliance with the incorporated by reference documents and this rulemaking effort is to make the rules less cumbersome and more efficient.

- 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.**

Article 1

The rule change will not have an impact on private and public employment in businesses, agencies, and political subdivisions of this state.

Articles 2 and 3

Overall, the rule change to incorporate by reference the laws and procedures will not have an impact on private and public employment in businesses, agencies, and political subdivisions of this state.

As detailed in the *Notice of Proposed Rulemaking*, Item #11(A) regarding the issuance of an individual operator certification versus general agency certification, there is an impact to private and public employment and agencies in relation. The rules are necessary to ensure database integrity for protection of the private criminal history of persons as well as ensure wants/warrants, criminal history records, fingerprint records and criminal history dispositions are accurate. Failure to meet standards could result in a criminal justice employee losing access or in extreme cases an agency could lose access. Database inaccuracies could impact persons and business attempting to obtain licenses or certifications; such as, teacher clearance cards and other occupational licenses, concealed weapons permits, and business licensees such as a liquor license among many other licenses and permits issued by the state.

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

a. An identification of the small business subject to the proposed rulemaking.

Article 1

The Department is not able to identify a small business directly associated to this rule change. The Department does not believe this rule change will have an impact on small business.

Articles 2 and 3

The Department is not able to identify a small business directly associated to this rule change. Small business may be indirectly affected through the systems security and standards protecting personal and private information and database integrity ensuring a small business has an accurate criminal history which could affect any occupational permits or licenses the business requires.

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

Articles 1, 2 and 3

The Department does not believe small businesses will be affected by this rulemaking and therefore will not incur the need to hire additional people nor incur additional outside expenses to comply with the rules.

c. A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses with reasons for the agency's decision to use or not to use each method.

Articles 1, 2 and 3

The Department believes there is no impact on small businesses and therefore it is not possible to evaluate alternative methods to lower the impact any further.

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

Article 1

Private persons and consumers, as taxpayers, are indirectly affected. The Department believes private persons and consumers, as taxpayers will benefit from the reduction or elimination of redundant rule text as well as accurate criminal history information used by criminal justice agencies to protect and keep safe neighborhoods, businesses and Arizona as a whole.

Articles 2 and 3

Private persons and consumers, as taxpayers, are indirectly affected. As mentioned in the *Notice of Proposed Rulemaking*, Item #11(A), private persons may be indirectly affected in the same manner as small businesses affected through the systems security and standards protecting information and database integrity. Thus, ensuring a person has an accurate criminal history which could affect any occupational permits or licenses the

person requires and is not later involved in law enforcement or other legal issues stemming from inaccurate criminal history information.

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

Articles 1, 2 and 3

The Department believes the elimination of redundancy in-state programs is of benefit to the state. While there will not be a direct effect on state revenues, eliminating the redundancies previously discussed will reduce the time and personnel requirements at both criminal justice agencies and the Department.

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.

Article 1

The Department is unable to identify any other less costly or less intrusive methods to achieve the purpose of the proposed rule changes at this time. The fingerprint card is prescribed by the federal government and used by all federal agencies and all other states for system standardization. The removal of redundant information contained in the incorporated by reference documents is by itself the definition of the least possible method.

Articles 2 and 3

The Department is unable to identify any other less costly or less intrusive methods to achieve the purpose of the proposed rule changes at this time. Reducing rule text to the more efficient incorporated by reference option is seen as the least intrusive and least costly method and can determine no other way to make the rule text more concise, more clear and less cumbersome than what is proposed in the rulemaking. Cost is monetized as employee time for this regular rulemaking; however, the benefit is reduced rulemaking time in the future through the use of the expedited rulemaking process to primarily update incorporated by reference documents.

Electronic systems security and operation inherently come with a cost to operate and maintain and to ward off more frequent and more complex cybersecurity attacks.

8. 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.

All Articles

The rule amendments are not based on any data or study.

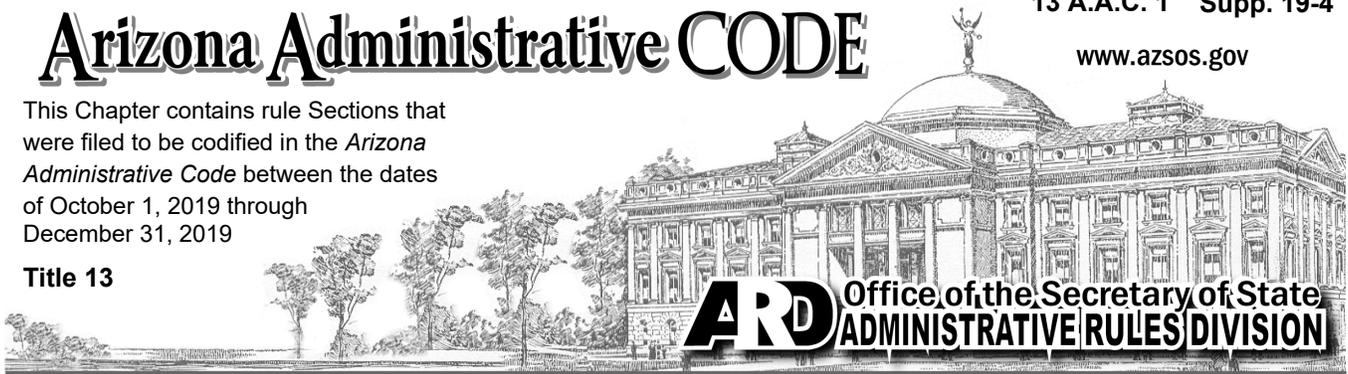
Arizona Administrative CODE

13 A.A.C. 1 Supp. 19-4

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of October 1, 2019 through December 31, 2019

Title 13



TITLE 13. PUBLIC SAFETY

CHAPTER 1. DEPARTMENT OF PUBLIC SAFETY - CRIMINAL IDENTIFICATION SECTION

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.

R13-1-401.	Non-criminal Justice Fingerprint Processing Charges	R13-1-402.	Refusal of Service	10
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Questions about these rules? Contact:

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The release of this Chapter in Supp. 19-4 replaces Supp. 19-2, 1-10 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), 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 13. PUBLIC SAFETY

CHAPTER 1. DEPARTMENT OF PUBLIC SAFETY - CRIMINAL IDENTIFICATION SECTION

(Authority: A.R.S. § 41-1750 et seq.)

Editor's Note: This Chapter was recodified under A.R.S. § 41-1011(C) to comply with the numbering system prescribed by the Office of the Secretary of State (Supp. 03-4).

ARTICLE 1. CRIMINAL HISTORY RECORDS

Table listing sections R13-1-101 through R13-1-111 and Exhibits A and B under Article 1, including descriptions and page numbers.

ARTICLE 2. ACJIS NETWORK

Article 2, consisting of R13-1-201 through R13-1-204, made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Section R13-1-201. ACJIS Security Measures 8

Table listing sections R13-1-202 through R13-1-204 under Article 1, including descriptions and page numbers.

ARTICLE 3. ARIZONA CRIME STATISTICS

Article 3, consisting of R13-1-301 through R13-1-302, made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2).

Section R13-1-301. Submittal of Hate Crimes Information 9
R13-1-302. Submittal of Uniform Crime Information 9

ARTICLE 4. APPLICANT FINGERPRINT PROCESSING

Article 4, consisting of R13-1-401 through R13-1-402, made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2).

Section R13-1-401. Non-criminal Justice Fingerprint Processing Charges 10
R13-1-402. Refusal of Service 10

ARTICLE 5. REPEALED

Article 5, consisting of R13-1-501 through R13-1-504, repealed by final exempt rulemaking at 25 A.A.R. 1444, with an immediate effective date of May 21, 2019 (Supp. 19-2).

Article 5, consisting of R13-1-501 through R13-1-504, made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2).

Section R13-1-501. Repealed 10
R13-1-502. Repealed 10
R13-1-503. Repealed 10
R13-1-504. Repealed 10
Exhibit A. Recodified 10
Exhibit B. Recodified 10

CHAPTER 1. DEPARTMENT OF PUBLIC SAFETY - CRIMINAL IDENTIFICATION SECTION

ARTICLE 1. CRIMINAL HISTORY RECORDS**R13-1-101. Definitions**

In addition to the definitions in A.R.S. §§ 41-1750 and 41-2201, the following definitions apply to this Chapter:

1. "Access authorization list" means a list that contains the names of agency personnel who are authorized to receive information directly or indirectly from the ACJIS network.
2. "ACJIS" means the Arizona Criminal Justice Information System, a statewide network housing various databases on persons and property in this state. The ACJIS network is maintained by the Department and is available to authorized local, state, and federal criminal justice agencies.
3. "ADRS" means the Arizona Disposition Reporting System, which is maintained by the Department and supports electronic submission of disposition information to the central state repository.
4. "ALETS" means the Arizona Law Enforcement Telecommunications System.
5. "Arizona Computerized Criminal History" means a criminal history record kept by the Department in a database of offenders arrested in this state.
6. "Arresting agency case number" means a unique combination of 15 numbers and letters used to identify a criminal justice agency's case number such as the Department case number, Department report number, or case report number. The first three characters are the AZAFIS-assigned alpha characters that identify the arresting agency.
7. "AZAFIS" means the Arizona Automated Fingerprint Identification System maintained by the Department that stores state-level arrest fingerprints and related information.
8. "AZAFIS Image Scanner" means the scanning system that scans and transmits ink and roll arrest fingerprint records.
9. "AZAFIS Livescan" means the electronic system that captures and transmits arrest information and fingerprints.
10. "CHRI" means Criminal History Record Information.
11. "Classifiable Fingerprints" means fingerprint impressions that meet the criteria of the FBI as contained in Form FD-258 (5-11-99), U.S. Government Printing Office: 2004-304-373/80029, incorporated by reference, available from the Department and the FBI (Attn: Logistical Support Unit (LSU), CJIS Division, 1000 Custer Hollow Road, Clarksburg, WV 26306). This incorporation contains no future editions or amendments.
12. "Date of arrest" means the date a person is taken into custody using the MMDDCCYY format as indicated in Exhibit A.
13. "Date of birth" means the subject's date of birth using MMDDCCYY format as indicated in Exhibit A.
14. "Department" means the Arizona Department of Public Safety.
15. "Disposition date" is the date of final disposition of a charge.
16. "Hot files" means records entered into ACJIS. These records include those regarding wanted persons and stolen vehicles.
17. "Juvenile fingerprinted" means identification signifying that an individual is a juvenile on an arrest fingerprint card if the juvenile is being remanded as an adult.
18. "Law Enforcement Agency" means a municipal, county, or state agency with powers of arrest.
19. "LSI" means local subject identifier, a unique combination of 15 numbers and letters used by local law enforcement agencies to identify an individual. It is the local equivalent of a State Identification (SID) number. The first three characters are the AZAFIS-assigned alpha characters that identify the agency.
20. "NCIC" means the National Crime Information Center maintained by the FBI, a national repository of files on persons and property relating to a crime.
21. "NIBRS" means the National Incident-Based Reporting System, a system designed to collect data on each crime occurrence and each incident and arrest within that occurrence for 22 crime categories.
22. "NLETS" means the National Law Enforcement Telecommunications System, a message switching system for the interstate exchange of criminal justice information.
23. "Offender-based Tracking System" means a computer system database that indexes information from selected Arizona Criminal Justice Information System data files.
24. "Offense" means an offense listed in the Arizona Revised Statutes or a city ordinance that is used to arrest an offender.
25. "Offense type" means a designation that indicates whether an offense is a felony or a misdemeanor.
26. "ORI" means a unique identifier assigned by the FBI to an agency.
27. "PCN" means Process Control Number.
28. "Personal identifiers" means a subject's sex, race, height, weight, hair color, and eye color.
29. "Place of birth" means the state or country in which a subject of record was born.
30. "State Identification Number (SID)" means an identification number that is assigned by the Department to an individual whose set of arrest fingerprints has been submitted to AZAFIS.
31. "Terminal Operator Certification Level A" means a terminal operator who is authorized to access the ACJIS network for entering, updating, clearing, or canceling records; conducting inquiries; and interpreting responses.
32. "Terminal Operator Certification Level B" means a terminal operator who is authorized to inquire into the ACJIS network and interpret responses.
33. "Terminal Operator Certification Level C" means a terminal operator who is authorized to inquire into the ACJIS/NCIC hot files.
34. "Terminal Operator Certification Level D" means technical personnel who are authorized to view information obtained from the ACJIS network.
35. "Terminal Operator Certification Level F" means a terminal operator who is authorized to inquire into, enter information into, or modify information in the ADRS.
36. "TOC" means Terminal Operator Certification.

Historical Note

Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5477, effective October 31, 2003 (Supp. 03-4). Formerly Section R13-1-01; renumbered under A.R.S. § 41-1011(C) to comply with the numbering system prescribed by the Office of the Secretary of State (Supp. 03-4). New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Amended by final rulemaking at 15 A.A.R. 273, effective March 7, 2009 (Supp. 09-1).

R13-1-102. Submission and Retention of Criminal Justice Information

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- A.** The chief officer of a criminal justice agency in this state shall ensure that CHRI is submitted to the Department's Central State Repository as follows.
1. A law enforcement agency shall submit arrest fingerprints to the Department through the AZAFIS or through the mail.
 2. A law enforcement agency shall submit any corrections to previously submitted arrest fingerprints to the Department by fax or mail on the "Correction of Arrest Information" form available from the Department. The Department's Central State Repository shall correct the record as requested. Corrections to or deletion of arrest records may only be requested by the arresting or booking agency. The Correction of Information form includes:
 - a. Name of the person authorizing the correction or deletion;
 - b. Agency name, ORI, and telephone and fax numbers;
 - c. PCN;
 - d. SID;
 - e. Subject of record's name and date of birth;
 - f. Arresting agency case number;
 - g. Date of arrest; and
 - h. Correction or deletion needed.
 3. Law enforcement agencies, prosecutors' offices, and courts shall submit dispositions related to an arrest fingerprint to the Department's Central State Repository within 40 days from the disposition date.
 4. A court shall submit court orders that affect criminal history records to the Department's Central State Repository. The Department shall update the criminal history record based on the information received in the court order.
 5. A county medical examiner shall provide to the Department's Central State Repository a full set of 10 inked and rolled fingerprints of a deceased person whose death is required to be investigated by the county medical examiner's office. The Department shall search the fingerprints to determine whether any criminal record is maintained and, if so, update the record to indicate notification of the death. The county medical examiner shall ensure that the complete fingerprint record submitted to the Department includes:
 - a. Deceased person's full name,
 - b. Date of birth, and
 - c. Personal identifiers.
- B.** The Department's Central State Repository shall retain a criminal history record until the subject of record reaches age 99 or one year after the Department receives notice of the subject of record's death.

Historical Note

Former rule 1. Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5477, effective October 31, 2003 (Supp. 03-4). Formerly Section R13-1-02; renumbered under A.R.S. § 41-1011(C) to comply with the numbering system prescribed by the Office of the Secretary of State (Supp. 03-4). New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Amended by final rulemaking at 15 A.A.R. 273, effective March 7, 2009 (Supp. 09-1).

R13-1-103. Procedures For Law Enforcement Agencies and Prosecutors' Offices to Forward Dispositions of Criminal Proceedings to the Central State Repository

- A.** A law enforcement agency and prosecutor office shall submit a completed Disposition Report form for crimes specified in A.R.S. § 41-1750(C) to the Department's Central State Repository as outlined in A.R.S. § 41-1750.

- B.** The law enforcement agency that prepares the Disposition Report form shall complete the information in blocks #1 through 16 on the Disposition Report form as shown in Exhibit A for the arrest charges filed by the agency.
1. The law enforcement agency that prepares the Disposition Report form shall forward the form to the appropriate prosecutor's office. If the arresting agency makes a decision not to pursue criminal charges, the arresting agency shall complete blocks #1 through #16 and blocks #18, 25, and 26, and submit the completed form to the Department's Central State Repository.
 2. The Department's Central State Repository shall update the criminal history record with the disposition report information.
- C.** The prosecutor's office shall verify the arrest charges listed on the Disposition Report form by the law enforcement agency, and add or amend the arrest charges listed by completing blocks #10 and 17, if applicable. The prosecutor's office shall reflect a decision to terminate one or all of the arrest charges on the Disposition Report form by completing all of the applicable blocks on the form.
1. For criminal charges filed with a court by the prosecutor, the prosecutor shall verify or complete information in blocks #10 through 16 and block #17, if applicable, on the Disposition Report form and forward the form to the appropriate court as required by Arizona Rule of Criminal Procedure 37.2.
 2. If the prosecutor decides not to file with the court one or more of the arrest charges listed on the Disposition Report form, the prosecutor shall complete blocks #18, 25, and 26. The prosecutor shall forward the completed Disposition Report form to the Central State Repository, and the prosecutor shall forward a photocopy of the form to the appropriate court, if one or more charges are being filed with the court. The Central State Repository shall update the criminal history record to indicate the disposition for arrest charges not filed by the prosecutor.
- D.** Agencies may submit disposition information electronically to the Department instead of in paper form if the agency enforces quality control measures and follows the electronic disposition format provided by the Department.

Historical Note

Former rule 2. Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5477, effective October 31, 2003 (Supp. 03-4). Formerly Section R13-1-03; renumbered under A.R.S. § 41-1011(C) to comply with the numbering system prescribed by the Office of the Secretary of State (Supp. 03-4). New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2).

R13-1-104. Procedures for Juveniles Remanded as Adults and Procedures for the Department of Corrections to Forward Information Regarding Inmates to the Central State Repository

- A.** The Department maintains criminal history records in the Central State Repository for juveniles as the subject of record only if the juvenile is remanded to an adult court. If a criminal justice agency is processing a juvenile who is remanded to an adult court, the agency shall use the procedures in this Article to submit criminal history records to the Department's Central State Repository.
- B.** The Arizona Department of Corrections shall forward each week to the Department a computer tape that includes for each inmate within the prison system the inmate's full name, date of birth, sex, race, inmate number assigned by the agency, arrest information for which the inmate is serving time in prison, and custody status. The Department shall update computerized

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files of the Offender-based Tracking System and the Arizona Computerized Criminal History, when applicable.

Historical Note

Former rule 3. Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5477, effective October 31, 2003 (Supp. 03-4). Formerly Section R13-1-04; renumbered under A.R.S. § 41-1011(C) to comply with the numbering system prescribed by the Office of the Secretary of State (Supp. 03-4). New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2).

R13-1-105. Procedures for a Criminal Court to Forward Dispositions of Criminal Charges to the Central State Repository

- A. A criminal court shall submit the disposition of all charges to the Central State Repository under Rule 37 of the Arizona Rules of Criminal Procedure.
- B. The court shall verify the arrest charges listed on the Disposition Report form and complete the applicable blocks for each charge addressed by the court.
- C. If there is more than one arrest charge listed on the Disposition Report form and any of the charges are being adjudicated by another court, the court shall photocopy the Disposition Report form and forward it to the other court.
- D. The court shall complete and forward the disposition form to the Department's Central State Repository. The Department shall update the criminal history record with the disposition report information.
- E. A criminal court shall use a Disposition Report supplemental form provided by the Department to report additional arrest charges and dispositions of the charges. The Disposition Report form is used to record the first three charges of an arrest event and the disposition of these charges. The Disposition Report supplemental form is used to record additional charges and the dispositions of those additional charges.
- F. Agencies may submit disposition information electronically to the Department's Central State Repository instead of a paper form if the agency enforces quality control measures and follows the electronic disposition formats provided by the Department.

Historical Note

Former rule 4. Formerly Section R13-1-05; renumbered under A.R.S. § 41-1011(C) to comply with the numbering system prescribed by the Office of the Secretary of State (Supp. 03-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2).

R13-1-106. Arrest Fingerprint Record Submission

- A. The chief officer of a criminal justice agency shall ensure that a completed arrest fingerprint record prescribed by subsection (D) in a format prescribed by the Department is sent to the Department's Central State Repository within 10 days from the date of fingerprinting using one of the following methods:
 1. AZAFIS Livescan,
 2. AZAFIS Image Scanner, or
 3. Ink-and-roll arrest fingerprint card.
- B. The chief officer of a criminal justice agency shall ensure that only one arrest fingerprint record is sent to the Department's Central State Repository for each arrest.
- C. A criminal justice agency using the ink-and-roll method of fingerprinting shall obtain blank arrest fingerprint cards from the FBI using the CJIS Supply Requisition Form (I-178).
- D. A completed arrest fingerprint record contains the following information:
 1. About the individual arrested:
 - a. Name;

- b. Date of birth;
- c. Personal identifiers;
- d. Juvenile fingerprinted, if applicable; and
- e. Place of birth;
2. Date of arrest;
3. ORI, and arresting agency's name and address;
4. Date of offense;
5. Local identification/reference:
 - a. LSI and arresting agency case number are required,
 - b. Local file number and agency tracking number are optional;
6. Citation information/charge description. Citation to the state, county, or city code allegedly violated and description of charge, i.e., A.R.S. § 13-1802, theft.
7. Offense type:
 - a. Designate a felony with an "F,"
 - b. Designate a misdemeanor with an "M";
8. Court ORI;
9. PCN;
10. Name or identification number of official taking fingerprints; and
11. Arrest fingerprints.

Historical Note

Former rule 5. Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5477, effective October 31, 2003 (Supp. 03-4). Formerly Section R13-1-06; renumbered under A.R.S. § 41-1011(C) to comply with the numbering system prescribed by the Office of the Secretary of State (Supp. 03-4). New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Amended by final rulemaking at 15 A.A.R. 273, effective March 7, 2009 (Supp. 09-1).

R13-1-107. Procedures for Review of Accuracy and Completeness of Criminal History Records

- A. The subject of record or the subject's attorney may request criminal history record information maintained by the Department for the sole purpose of reviewing the accuracy and completeness of the subject of record's criminal history record.
- B. To obtain a copy of a criminal history record, the subject of record shall submit a completed Record Review Instruction Packet provided by the Department.
- C. A completed Record Review Instruction Packet includes the following for the subject of record:
 1. Full set of classifiable fingerprints taken by an official at a law enforcement agency,
 2. Name,
 3. Date of birth,
 4. Personal identifiers,
 5. Place of birth,
 6. Social Security number,
 7. Address of residence,
 8. Date fingerprinted, and
 9. Signature.
- D. The completed Record Review Instruction Packet shall be returned to the Department in the envelope provided.
- E. The subject of record's attorney may obtain the subject of record's criminal history record by providing a notarized letter of authorization from the subject of record with the completed Record Review Instruction Packet.
- F. Within 15 days of receipt of the completed Record Review Instruction Packet, the Department shall provide a response to the subject of record or the subject's attorney. The Department shall include in the response arrest and disposition information maintained by the Department on the subject of record and a

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Review and Challenge of Arizona Criminal History Record Information form that requests:

1. Subject of record's full name;
2. Signature of subject of record or attorney representing the subject of record;
3. Date of submission of the challenge;
4. Summary of the exceptions and reasons for the exceptions, specifying each arrest, and including:
 - a. Name of arresting agency,
 - b. Date of arrest,
 - c. Arrest number, and
 - d. Charge;
5. Subject of record's mailing address; and
6. Signature of the subject of record, verifying the summary of exceptions and reasons.

Historical Note

Former rule 6. Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5477, effective October 31, 2003 (Supp. 03-4). Formerly Section R13-1-07; renumbered under A.R.S. § 41-1011(C) to comply with the numbering system prescribed by the Office of the Secretary of State (Supp. 03-4). New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2).

R13-1-108. Procedures for Challenging the Accuracy and Completeness of Criminal History Records

- A. To challenge a criminal history record, the subject of record or the subject of record's attorney shall complete and return the Review and Challenge of Arizona Criminal History Record Information form referenced in R13-1-107(F) within 35 days of the date of the response referenced in R13-1-107(F).
- B. The Department shall complete an audit of the challenged entries within 15 days of receipt of the form by:
 1. Contacting the contributing agencies,
 2. Verifying the information, and
 3. Researching dispositions on any challenged entry.
- C. If the Department determines that a correction to or deletion from the criminal history record is necessary, the Department shall modify the record and notify the Federal Bureau of Investigation.
- D. Upon conclusion of the audit referenced in subsection (B), the Department shall send written notification of the audit result and a copy of any record modification to the subject of record or the subject of record's attorney.
- E. The Department shall include in the notice of audit result referenced in subsection (D) a statement that the subject of record may request a hearing to determine the accuracy of the criminal history record. To request a hearing, the subject of record or the subject of record's attorney shall submit to the Department a written request within 35 days of the date of the notice of audit result referenced in subsection (D).

Historical Note

Former rule 7. Formerly Section R13-1-08; renumbered under A.R.S. § 41-1011(C) to comply with the numbering system prescribed by the Office of the Secretary of State (Supp. 03-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Amended by final rulemaking at 15 A.A.R. 273, effective March 7, 2009 (Supp. 09-1).

R13-1-109. Hearing Procedures

- A. Under A.R.S. § 41-2204(6), a hearing shall be conducted after receipt of a request for a hearing to determine the accuracy of information in a criminal history record maintained by the Central State Repository.

- B. The Office of Administrative Hearing shall conduct a hearing to determine the accuracy of information in a criminal history record maintained by the Central State Repository in accordance with the procedures in A.R.S. Title 41, Chapter 6, Article 10 and the rules issued by the Office of Administrative Hearings.
- C. Under A.R.S. § 41-1092.08, within 30 days after the Office of Administrative Hearings sends the administrative law judge's recommended decision to the Director, the Director shall review the recommended decision and may accept, modify, or reject it.

Historical Note

Former rule 8. Formerly Section R13-1-09; renumbered under A.R.S. § 41-1011(C) to comply with the numbering system prescribed by the Office of the Secretary of State (Supp. 03-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Former R13-1-109 renumbered to R13-1-111, new Section made by final rulemaking at 15 A.A.R. 273, effective March 7, 2009 (Supp. 09-1).

R13-1-110. Review or Rehearing of the Director's Decision

- A. In accordance with A.R.S. § 41-1092.09, a party may file with the Department a motion for rehearing or review of a decision issued by the Director under R13-1-109.
- B. A party may amend a motion for rehearing or review at any time before the Department rules on the motion.
- C. The Department may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
 1. Irregularity in the proceedings or any order or abuse of discretion that deprived the moving party of a fair hearing;
 2. Misconduct of the Director, Department staff, or an administrative law judge;
 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 hearing;
 5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings; and
 6. The findings of fact are not justified by the evidence or the decision is contrary to law.
- D. The Department may affirm or modify a decision or grant a rehearing or review on all or some of the issues for any of the reasons listed in subsection (C). The Department shall specify with particularity the grounds for an order modifying a decision or granting a rehearing or review. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.
- E. Not later than 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Department may, on its own initiative, order a rehearing or review of the decision for any reason listed in subsection (C). The Department may grant a motion for rehearing or review, timely served, for a reason not stated in a motion.
- F. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service of the motion, serve response affidavits. The Department may extend this period for a maximum of 20 days for good cause or by written stipulation of the parties. The Department may permit reply affidavits.
- G. If, in a particular decision, the Director makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public health, safety, or welfare

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and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision shall be issued as a final decision without an opportunity for a rehearing or review.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 273, effective March 7, 2009 (Supp. 09-1).

R13-1-111. Information Deemed Useful for the Study and Prevention of Crime or the Administration of Criminal Justice

- A.** An individual or agency that wishes to obtain criminal history records from the Central State Repository for the purpose of research, evaluative or statistical activities, the prevention of crime, or to provide services for the administration of criminal justice shall:

1. Provide a written or electronic request to the Department that specifies the purpose of the study, or how the records will be used to prevent crime or administer criminal justice; and
 2. If the request is approved, sign a non-disclosure agreement that meets the requirements of A.R.S. § 41-1750(G)(9) and is prepared and provided by the Department.
- B.** The Department shall review the signed non-disclosure agreement and authorize the exchange of information in accordance with the agreement.

Historical Note

New Section R13-1-111 renumbered from R13-1-109 and amended by final rulemaking at 15 A.A.R. 273, effective March 7, 2009 (Supp. 09-1).

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Exhibit A. Disposition Report Form Block Completion Instructions for Law Enforcement and Prosecutors

Block #1: SID NUMBER/AZ: If subject was previously arrested, the State Identification number may be obtained from the Arizona Computerized Criminal History (ACCH) files via terminal inquiry.

Block #2: NAME: Subject's complete name as shown on the arrest fingerprint record that was completed for this arrest.

Block #3: DATE OF BIRTH (DOB): As shown on the arrest fingerprint record (MMDDCCYY) MM = month, DD = day, CCYY = full year. Example: 03/20/1954.

Block #4: DATE OF ARREST: As shown on the arrest fingerprint record (MMDDCCYY) MM = month, DD = day, CCYY = full year. Example: 04/20/2001.

Block #5: PCN: PCN assigned for specific arrest incident via AZAFIS.

Block #6: ARRESTING AGENCY ORI: The NCIC-assigned originating agency identifier (ORI).

Block #7: ARRESTING AGENCY CASE NUMBER: The arresting agency's case number.

Block #8: BOOKING AGENCY ORI: The NCIC-assigned originating agency identifier (ORI).

Block #9: BOOKING NUMBER: The number assigned by the detention facility.

Block #10: CHARGES: Each offense charged at the time of arrest MUST be listed on line "a". Line "b" is used only for amendments to the initial arrest charge(s).

Block #11: ARIZONA REVISED STATUTE (A.R.S.) or Ordinance: Enter the correct A.R.S. number or the County/City Ordinance number for each charge (as indicated on the arrest fingerprint record.)

Block #12: DATE OF OFFENSE/VIOLATION: Enter the date the offense/violation was committed (MMDDCCYY).

Block #13: OFFENSE TYPE: Circle "M" for misdemeanor. Circle "F" for felony.

Block #14: PREPARATORY OFFENSE CODE: Enter the appropriate code from the list on the front of this form. Indicate "A" for Attempted, "C" for Conspiracy to Commit, "F" for facilitate, or "S" for solicit.

Block #15: DOMESTIC VIOLENCE & VICTIM INFORMATION CODE: Enter the appropriate code from the list on the front of the form. Indicate "D" for a crime involving domestic violence, "M" when the victim is a minor, "A" when the victim is a vulnerable adult, "L" when the victim is a law enforcement officer, "C" for a dangerous crime against a child/children.

Block #16: DESIGNATED COURT NAME/IDENTIFIER: Enter the designated court name or NCIC-assigned originating identifier (ORI) for each charge. Block #17: AMENDED TO: Enter the letter "X" in block 17, line "a"; then write amended charge(s) and sentence information on the corresponding "b" line, beginning in block 10, completing all applicable blocks through block 27.

Block #18: DISPOSITION CODE: Enter the appropriate disposition code from the following: "NF" for no complaint filed, "NR" for not referred to prosecution, or "DP" for deferred prosecution.

Block #25: DISPOSITION DATE: Enter the official disposition date (MMDDCCYY).

Block #26: AGENCY ORI MAKING DISPOSITION DECISION: The NCIC-assigned originating agency identifier (ORI) of the agency making the disposition decision.

Block #27: FURTHER EXPLANATIONS OR MODIFICATIONS: Further explanation regarding a particular charge/disposition (list the charge number) may be entered in this section.

Block #28: RIGHT INDEX FINGERPRINT: (lower right corner of the form) At the time of arrest/fingerprinting, the subject's right index fingerprint may be placed in this box. (This fingerprint is optional and not required to process the Disposition Report form.)

Historical Note

Article 1, Exhibit A recodified from Article 5, Exhibit A, effective February 7, 2019 (Supp. 19-1).

Exhibit B. Disposition Report Form Block Completion Instructions for Criminal Courts

Block #1: SID NUMBER/AZ: If subject was previously arrested, the State Identification number may be obtained from the Arizona Computerized Criminal History (ACCH) files via terminal inquiry.

Block #2: NAME: Subject's complete name as shown on the arrest fingerprint record that was completed for this arrest.

Block #3: DATE OF BIRTH (DOB): As shown on the arrest fingerprint record (MMDDCCYY) MM = month, DD = day, CCYY = full year. Example: 03/20/1954.

Block #4: DATE OF ARREST: As shown on the arrest fingerprint record (MMDDCCYY) MM = month, DD = day, CCYY = full year. Example: 04/20/2001.

Block #5: PCN: PCN assigned for specific arrest incident via AZAFIS.

Block #6: ARRESTING AGENCY ORI: The NCIC-assigned originating agency identifier (ORI).

Block #7: ARRESTING AGENCY CASE NUMBER: The arresting agency's case number.

Block #8: BOOKING AGENCY ORI: The NCIC-assigned originating agency identifier (ORI).

Block #9: BOOKING NUMBER: The number assigned by the detention facility.

Block #10: CHARGES: Each offense charged at the time of arrest MUST be listed on line "a". Line "b" is used only for amendments to the initial arrest charge(s).

Block #11: ARIZONA REVISED STATUTE (A.R.S.) or Ordinance: Enter the correct A.R.S. number or the County/City Ordinance number for each charge (as indicated on the arrest fingerprint record.)

Block #12: DATE OF OFFENSE/VIOLATION: Enter the date the offense/violation was committed (MMDDCCYY).

Block #13: OFFENSE TYPE: Circle "M" for misdemeanor. Circle "F" for felony.

Block #14: PREPARATORY OFFENSE CODE: Enter the appropriate code from the list on the front of this form. Indicate "A" for attempted, "C" for Conspiracy to Commit, "F" for facilitate, or "S" for solicit.

Block #15: DOMESTIC VIOLENCE & VICTIM INFORMATION CODE: Enter the appropriate code from the list on the front of the form. Indicate "D" for a crime involving domestic violence, "M" when the victim is a minor, "A" when the victim is a vulnerable adult, "L" when the victim is a law enforcement officer, "C" for a dangerous crime against a child/children.

Block #16: DESIGNATED COURT NAME/IDENTIFIER: Enter the designated court name or NCIC-assigned originating identifier (ORI) for each charge.

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Block #17: AMENDED TO: Enter the letter "X" in block 17, line "a"; then write amended charge(s) and sentence information on the corresponding "b" line, beginning in block 10, completing all applicable blocks through block 27.

Block #18: DISPOSITION CODE: Enter the appropriate disposition or appellate code from the list on the front of the form.

AC — Acquitted/ Not guilty

CD — Court Dismissed

DP — Deferred Prosecution

DS — Deferred Sentencing

GG — Guilty

GI — Guilty but Insane

NF — No complaint filed

NP — Nolo contendere plea

NR — Not referred for prosecution

PD — Pardoned

PM — Pending due to mental incompetency

PO — Plea to other charges

RI — Not responsible by reason of insanity

APPELLATE CODES:

AF — Affirmed

AR — Affirmed, Remanded for Re-sentencing

RR — Reversed and Remanded

RV — Reversed and Conviction Overturned

SM — Sentence Modified

Block #19: PRISON/JAIL: If the defendant was sentenced to confinement, circle "P" for prison or "J" for Jail.

Block #20: LENGTH OF CONFINEMENT: Indicate the length of confinement (in days, months, years, etc.) to which the defendant is sentenced. Example: 1 yr. 2 mo.

Block #21: SENTENCE CODE: Enter the appropriate sentence code from the list on the front of the form.

CC — Concurrent

CS — Consecutive

PS — Public or Community Service

SS — Court Suspended Sentence

Block #22: PROBATION LENGTH: Indicate the length of probation in days, months, years, etc. to which the subject is sentenced. Example: 3 yrs.

Block #23: FINE: Circle "Y" for Yes, to indicate that a fine was imposed. Circle "N" for No, to indicate that a fine was not imposed.

Block #24: COURT CASE COMPLAINT NUMBER: The case number assigned by the Justice/Municipal/Superior Court.

Block #25: DISPOSITION DATE: Enter the official disposition date (MMDDCCYY).

Block #26: AGENCY ORI MAKING DISPOSITION DECISION: The NCIC-assigned originating agency identifier (ORI) of the agency making the disposition decision.

Block #27: FURTHER EXPLANATIONS OR MODIFICATIONS: Further explanation regarding a particular charge/disposition (list the charge number) may be entered in this block.

Block #28: RIGHT INDEX FINGERPRINT: (lower right corner of the form) At the time of arrest/fingerprinting, the subject's right index fingerprint may be placed in this box. (This fingerprint is optional and not required to process the Disposition Report form.)

Historical Note

Article 1, Exhibit B recodified from Article 5, Exhibit B, effective February 7, 2019 (Supp. 19-1).

ARTICLE 2. ACJIS NETWORK

R13-1-201. ACJIS Security Measures

A. All criminal justice agencies that collect, store, disseminate, or access criminal justice information or criminal history information from the ACJIS shall sign and return to the Department's Access Integrity Unit an ACJIS User Agreement. The ACJIS User Agreement states that the agency will follow state and federal requirements as specified in R13-1-204(A) relating to the collection, storage, dissemination, and access of criminal justice information and criminal history record information obtained directly or indirectly from the ACJIS.

B. A criminal justice agency accessing the ACJIS network shall meet the following security guidelines:

1. Access and dissemination of information from the ACJIS network is limited to criminal justice agencies for the administration of criminal justice or for criminal justice employment.
2. An agency that enters records into the ACJIS network is responsible for the accuracy, timeliness, and completeness of the record entries.

3. An agency shall have an ACJIS misuse policy that outlines the sanctions imposed on agency personnel who misuse ACJIS.
 4. An agency shall ensure that agency equipment connected to the ACJIS network is fully compatible with existing ACJIS computer equipment and upgraded as necessary to remain compatible with ACJIS configurations and architecture.
 5. An agency shall ensure that agency personnel maintain appropriate operator certification levels as specified in R13-1-203.
- C. A criminal justice agency that interfaces its record management system with the ACJIS network shall meet the following interface standards and security requirements as set by the Department:
1. Provide to the Department a complete and accurate schematic of agency network and hardware configuration;
 2. Ensure that there are security controls to prevent unauthorized access to ACJIS information;

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3. Follow user identification and password configurations specified by the Department;
4. Establish a process to review system logs and store the logs for one year; and
5. Sign the Department's ACJIS interface addendum agreeing to follow the standards in this subsection.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2).

R13-1-202. Arizona Criminal Justice Information System Training and Proficiency Guidelines

A criminal justice agency that accesses the ACJIS Network shall follow the ACJIS terminal operator certification (TOC) testing guidelines developed and maintained by the Department. The guidelines are:

1. Each agency with terminal access to the ACJIS Network shall appoint an ACJIS System Security Officer (SSO) to act as liaison to the Department's CJIS Systems Officer.
2. The agency SSO shall:
 - a. Oversee the development and maintenance of the agency's ACJIS Network and TOC training outlines;
 - b. Oversee the Terminal Operator Certification Training Program;
 - c. Oversee the Criminal Justice Practitioner's Training Program; and
 - d. Ensure that all agency terminal operators pass a test by obtaining at least a score of 70 percent for the appropriate Terminal Operator Certification Level before accessing the ACJIS.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2).

R13-1-203. Terminal Operator Certification Training or Criminal Justice Practitioner's Program

- A. The SSO shall ensure that the Terminal Operator Certification Training Programs for terminal operator levels A, B, C, and D contain the following areas of training as applicable to the certification level:
 1. Privacy and security of the ACJIS/NCIC system;
 2. Record inquiry and entry procedures on all databases;
 3. Validation procedures;
 4. Hit confirmation procedures;
 5. Dissemination procedures;
 6. Terminal operator certification procedures;
 7. Use of ALETS and the NLETS; and
 8. Viewing the ACJIS operations overview video.
- B. The agency SSO shall ensure that the Criminal Justice Practitioner's Program includes, at a minimum, viewing the ACJIS operations overview video.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2).

R13-1-204. Procedures for and Restrictions on Dissemination of Information

- A. A criminal justice agency shall follow the terms and conditions for dissemination of criminal justice or criminal history record information obtained from the ACJIS network outlined in:
 1. A.R.S. § 41-1750;
 2. 28 CFR Part 20 dated July 2004, incorporated by reference, available from the Department and the FBI at 1000 Custer Hollow Road, Clarksburg, WV 26306. This incor-

poration by reference contains no future editions or amendments; and

3. The ACJIS User Agreement as stated in R13-1-201:
- B. A criminal justice agency shall provide an access authorization list to the Department. The Department shall disseminate criminal justice or criminal history record information only to individuals on the agency's access authorization list. The authorization list shall include:
 1. Name of agency;
 2. Name of authorized individual;
 3. Date of birth of authorized individual;
 4. Date of hire of authorized individual, if applicable;
 5. Terminal operator certification number of authorized individual, if applicable; and
 6. Phone numbers of authorized individual.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2).

ARTICLE 3. ARIZONA CRIME STATISTICS**R13-1-301. Submittal of Hate Crimes Information**

- A. A law enforcement agency shall submit hate crime information to the Department as outlined in the following publications that are incorporated by reference, available from the Department's Access Integrity Unit and the FBI at 1000 Custer Hollow Road, Clarksburg, WV 26306, and include no future editions or amendments:
 1. Federal Bureau of Investigation Training Guide for Hate Crime Data Collection, Appendix C; and Federal Bureau of Investigation Hate Crime Data Collection Guidelines, dated October 1999;
 2. Federal Bureau of Investigation National Incident Based Reporting System Handbooks:
 - a. Uniform Crime Reporting Handbook, NIBRS Edition, dated 1992;
 - b. Volume 1 – Data Collection Guidelines, dated August 2000;
 - c. Volume 2 – Data Submission Specifications, dated May 1992;
 - d. NIBRS Addendum for Submitting LEOKA data, dated October 2002; and
 - e. Volume 4 – Error Message Manual, dated December 1999.
- B. The Department shall provide law enforcement agencies with information contained in the FBI's Uniform Crime Reporting State Program Bulletins that the Department determines is necessary to comply with this Section.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2).

R13-1-302. Submittal of Uniform Crime Information

- A. A law enforcement agency shall submit uniform crime information to the Department as outlined in the following publications that are incorporated by reference, available from the Department's Access Integrity Unit and the FBI at 1000 Custer Hollow Road, Clarksburg, West Virginia, and contains no future editions or amendments:
 1. Federal Bureau of Investigation Uniform Crime Reporting Handbook, dated 2004;
 2. Federal Bureau of Investigation National Incident Based Reporting System Handbooks incorporated in R13-1-301(A)(2).
- B. The Department shall provide law enforcement agencies with information contained in the FBI's Uniform Crime Reporting

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State Program Bulletins that the Department determines is necessary to comply with this Section.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2).

ARTICLE 4. APPLICANT FINGERPRINT PROCESSING**R13-1-401. Non-criminal Justice Fingerprint Processing Charges**

- A.** For an applicant for non-criminal justice employment, fingerprint processing charges are:
1. For a state criminal records check, \$5; and
 2. If a federal criminal record check by the FBI is requested by the applicant, the Department shall collect an additional charge to cover the cost billed to the Department by the FBI for the federal criminal records check.
- B.** For a state criminal records check, an individual or government agency shall submit payment by:
1. Credit card;
 2. Cashier's check;
 3. Money order;
 4. For government agencies a transfer of funds through the State's accounting system; or
 5. Check drawn on a government agency account.
- C.** All charges are non-refundable.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 3558, effective January 18, 2020 (Supp. 19-4).

R13-1-402. Refusal of Service

- A.** If any form of payment is not accepted by the Department's banking facility, the Department shall send the state agency, company, or individual that submitted the payment a notice of nonpayment.
- B.** The notice of nonpayment informs the state agency, company, or individual that the Department will not accept non-criminal justice fingerprint submissions from the agency, company, or individual until past due payment is made.
- C.** At the Department's discretion, the Department may require the delinquent party to submit all future payments in the form of a cashier's check, credit card or money order.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 3558, effective January 18, 2020 (Supp. 19-4).

ARTICLE 5. REPEALED**R13-1-501. Repealed****Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Section R13-1-501 repealed by final expedited rulemaking at 25 A.A.R. 1444, effective immediately May 21, 2019 (Supp. 19-2).

R13-1-502. Repealed**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Section amended by final rulemaking at 23 A.A.R. 3546, effective February 10, 2018 (Supp. 17-4). Section R13-1-502 repealed by final expedited rulemaking at 25 A.A.R. 1444, effective immediately May 21, 2019 (Supp. 19-2).

R13-1-503. Repealed**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Section R13-1-503 repealed by final expedited rulemaking at 25 A.A.R. 1444, effective immediately May 21, 2019 (Supp. 19-2).

R13-1-504. Repealed**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Section amended by final rulemaking at 23 A.A.R. 3546, effective February 10, 2018 (Supp. 17-4). Section R13-1-504 repealed by final expedited rulemaking at 25 A.A.R. 1444, effective immediately May 21, 2019 (Supp. 19-2).

Exhibit A. Recodified**Historical Note**

Article 5, Exhibit A made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Article 5, Exhibit A recodified to Article 1, Exhibit B, effective February 7, 2019 (Supp. 19-1).

Exhibit B. Recodified**Historical Note**

Article 5, Exhibit B made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Article 5, Exhibit B recodified to Article 1, Exhibit B, effective February 7, 2019 (Supp. 19-1).

41-1713. Powers and duties of director; authentication of records

A. The director of the department shall:

1. Be the administrative head of the department.
2. Subject to the merit system rules, appoint, suspend, demote, promote or dismiss all other classified employees of the department on the recommendation of their respective division superintendent. The director shall determine and furnish the law enforcement merit system council established by section 41-1830.11 with a table of organization. The superintendent of each division shall serve at the concurrent pleasure of the director and the governor.
3. Except as provided in sections 12-119, 41-1304 and 41-1304.05, employ officers and other personnel as the director deems necessary for the protection and security of the state buildings and grounds in the governmental mall described in section 41-1362, state office buildings in Tucson and persons who are on any of those properties. Department officers may make arrests and issue citations for crimes or traffic offenses and for any violation of a rule adopted under section 41-796. For the purposes of this paragraph, security does not mean security services related to building operation and maintenance functions provided by the department of administration.
4. Make rules necessary for the operation of the department.
5. Annually submit a report of the work of the department to the governor and the legislature, or more often if requested by the governor or the legislature.
6. Appoint a deputy director with the approval of the governor.
7. Adopt an official seal that contains the words "department of public safety" encircling the seal of this state as part of its design.
8. Investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a license or registration certificate issued pursuant to title 32, chapter 26.
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.
10. Adopt and administer the breath, blood or other bodily substances test rules pursuant to title 28, chapter 4.
11. Develop procedures to exchange information with the department of transportation for any purpose related to sections 28-1324, 28-1325, 28-1326, 28-1462 and 28-3318.
12. Collaborate with the state forester in presentations to legislative committees on issues associated with wildfire prevention, suppression and emergency management as provided by section 37-1302, subsection B.

B. The director may:

1. Issue commissions to officers of the department.
2. Request the cooperation of the utilities, communication media and public and private agencies and any sheriff or other peace officer in any county or municipality, within the limits of their respective jurisdictions when necessary, to aid and assist in the performance of any duty imposed by this chapter.

3. Cooperate with any public or private agency or person to receive or give necessary assistance and may contract for such assistance subject to legislative appropriation controls.
4. Utilize the advice of the board and cooperate with sheriffs, local police and peace officers within the state for the prevention and discovery of crimes, the apprehension of criminals and the promotion of public safety.
5. Acquire in the name of the state, either in fee or lesser estate or interest, all real or any personal property that the director considers necessary for the department's use, by purchase, donation, dedication, exchange or other lawful means. All acquisitions of personal property pursuant to this paragraph shall be made as prescribed in chapter 23 of this title unless otherwise provided by law.
6. Dispose of any property, real or personal, or any right, title or interest in the property, when the director determines that the property is no longer needed or necessary for the department's use. Disposition of personal property shall be as prescribed in chapter 23 of this title. The real property shall be sold by public auction or competitive bidding after notice published in a daily newspaper of general circulation, not less than three times, two weeks before the sale and subject to the approval of the director of the department of administration. When real property is sold, it shall not be sold for less than the appraised value as established by a competent real estate appraiser. Any monies derived from the disposal of real or personal property shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund as authorized by section 41-1752, subsection B, paragraph 6.
7. Sell, lend or lease personal property directly to any state, county or local law enforcement agency. Personal property may be sold or leased at a predetermined price without competitive bidding. Any state, county or local law enforcement agency receiving personal property may not resell or lease the property to any person or organization except for educational purposes.
8. Dispose of surplus property by transferring the property to the department of administration for disposition to another state budget unit or political subdivision if the state budget unit or political subdivision is not a law enforcement agency.
9. Lease or rent personal property directly to any state law enforcement officer for the purpose of traffic safety, traffic control or other law enforcement related activity.
10. Sell for one dollar, without public bidding, the department issued handgun or shotgun to a department officer on duty related retirement pursuant to title 38, chapter 5, article 4. Any monies derived from the sale of the handgun or shotgun to the retiring department officer shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund as authorized by section 41-1752, subsection B, paragraph 6.
11. Conduct state criminal history records checks for the purpose of updating and verifying the status of current licensees or registrants who have a license or certificate issued pursuant to title 32, chapter 26. The director shall investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a registration certificate issued pursuant to title 32, chapter 26.
12. Grant a maximum of two thousand eighty hours of industrial injury leave to any sworn department employee who is injured in the course of the employee's duty, any civilian department employee who is injured in the course of performing or assisting in law enforcement or hazardous duties or any civilian department employee who was injured as a sworn department employee rehired after August 9, 2001 and would have been eligible pursuant to this paragraph and whose work-related injury prevents the employee from performing the normal duties of that employee's classification. This industrial injury leave is in addition to any vacation or sick leave earned or granted to the employee and does not affect the employee's eligibility for any other benefits, including workers' compensation. The employee is not eligible for payment pursuant to section 38-615 of industrial injury leave that is granted pursuant to this paragraph. Subject to approval by the law enforcement merit system council, the director shall adopt rules and procedures regarding industrial injury leave hours granted pursuant to this paragraph.

13. Sell at current replacement cost, without public bidding, the department issued badge of authority to an officer of the department on the officer's promotion or separation from the department. Any monies derived from the sale of the badge to an officer shall be deposited, pursuant to sections 35-146 and 35-147, in the department of public safety administration fund to offset replacement costs.

C. The director and any employees of the department that the director designates in writing may use the seal adopted pursuant to subsection A, paragraph 7 of this section to fully authenticate any department records and copies of these records. These authenticated records or authenticated copies of records shall be judicially noticed and shall be received in evidence by the courts of this state without any further proof of their authenticity.

41-1750. Central state repository; department of public safety; duties; funds; accounts; definitions

A. The department is responsible for the effective operation of the central state repository in order to collect, store and disseminate complete and accurate Arizona criminal history records and related criminal justice information. The department shall:

1. Procure from all criminal justice agencies in this state accurate and complete personal identification data, fingerprints, charges, process control numbers and dispositions and such other information as may be pertinent to all persons who have been charged with, arrested for, convicted of or summoned to court as a criminal defendant for a felony offense or an offense involving domestic violence as defined in section 13-3601 or a violation of title 13, chapter 14 or title 28, chapter 4.
2. Collect information concerning the number and nature of offenses known to have been committed in this state and of the legal steps taken in connection with these offenses, such other information that is useful in the study of crime and in the administration of criminal justice and all other information deemed necessary to operate the statewide uniform crime reporting program and to cooperate with the federal government uniform crime reporting program.
3. Collect information concerning criminal offenses that manifest evidence of prejudice based on race, color, religion, national origin, sexual orientation, gender or disability.
4. Cooperate with the central state repositories in other states and with the appropriate agency of the federal government in the exchange of information pertinent to violators of the law.
5. Ensure the rapid exchange of information concerning the commission of crime and the detection of violators of the law among the criminal justice agencies of other states and of the federal government.
6. Furnish assistance to peace officers throughout this state in crime scene investigation for the detection of latent fingerprints and in the comparison of latent fingerprints.
7. Conduct periodic operational audits of the central state repository and of a representative sample of other agencies that contribute records to or receive criminal justice information from the central state repository or through the Arizona criminal justice information system.
8. Establish and enforce the necessary physical and system safeguards to ensure that the criminal justice information maintained and disseminated by the central state repository or through the Arizona criminal justice information system is appropriately protected from unauthorized inquiry, modification, destruction or dissemination as required by this section.
9. Aid and encourage coordination and cooperation among criminal justice agencies through the statewide and interstate exchange of criminal justice information.
10. Provide training and proficiency testing on the use of criminal justice information to agencies receiving information from the central state repository or through the Arizona criminal justice information system.
11. Operate and maintain the Arizona automated fingerprint identification system established by section 41-2411.
12. Provide criminal history record information to the fingerprinting division for the purpose of screening applicants for fingerprint clearance cards.

B. The director may establish guidelines for the submission and retention of criminal justice information as deemed useful for the study or prevention of crime and for the administration of criminal justice.

C. The chief officers of criminal justice agencies of this state or its political subdivisions shall provide to the central state repository fingerprints and information concerning personal identification data, descriptions, crimes for which persons are arrested, process control numbers and dispositions and such other information as may be pertinent to all persons who have been charged with, arrested for, convicted of or summoned to court as criminal defendants for felony offenses or offenses involving domestic violence as defined in section 13-3601 or violations of title 13, chapter 14 or title 28, chapter 4 that have occurred in this state.

D. The chief officers of law enforcement agencies of this state or its political subdivisions shall provide to the department such information as necessary to operate the statewide uniform crime reporting program and to cooperate with the federal government uniform crime reporting program.

E. The chief officers of criminal justice agencies of this state or its political subdivisions shall comply with the training and proficiency testing guidelines as required by the department to comply with the federal national crime information center mandates.

F. The chief officers of criminal justice agencies of this state or its political subdivisions also shall provide to the department information concerning crimes that manifest evidence of prejudice based on race, color, religion, national origin, sexual orientation, gender or disability.

G. The director shall authorize the exchange of criminal justice information between the central state repository, or through the Arizona criminal justice information system, whether directly or through any intermediary, only as follows:

1. With criminal justice agencies of the federal government, Indian tribes, this state or its political subdivisions and other states, on request by the chief officers of such agencies or their designated representatives, specifically for the purposes of the administration of criminal justice and for evaluating the fitness of current and prospective criminal justice employees. The department may conduct periodic state and federal criminal history records checks for the purpose of updating the status of current criminal justice employees or volunteers and may notify the criminal justice agency of the results of the records check. The department is authorized to submit fingerprints to the federal bureau of investigation to be retained for the purpose of being searched by future submissions to the federal bureau of investigation including latent fingerprint searches.

2. With any noncriminal justice agency pursuant to a statute, ordinance or executive order that specifically authorizes the noncriminal justice agency to receive criminal history record information for the purpose of evaluating the fitness of current or prospective licensees, employees, contract employees or volunteers, on submission of the subject's fingerprints and the prescribed fee. Each statute, ordinance, or executive order that authorizes noncriminal justice agencies to receive criminal history record information for these purposes shall identify the specific categories of licensees, employees, contract employees or volunteers, and shall require that fingerprints of the specified individuals be submitted in conjunction with such requests for criminal history record information. The department may conduct periodic state and federal criminal history records checks for the purpose of updating the status of current licensees, employees, contract employees or volunteers and may notify the noncriminal justice agency of the results of the records check. The department is authorized to submit fingerprints to the federal bureau of investigation to be retained for the purpose of being searched by future submissions to the federal bureau of investigation including latent fingerprint searches.

3. With the board of fingerprinting for the purpose of conducting good cause exceptions pursuant to section 41-619.55 and central registry exceptions pursuant to section 41-619.57.

4. With any individual for any lawful purpose on submission of the subject of record's fingerprints and the prescribed fee.

5. With the governor, if the governor elects to become actively involved in the investigation of criminal activity or the administration of criminal justice in accordance with the governor's constitutional duty to ensure that the laws are faithfully executed or as needed to carry out the other responsibilities of the governor's office.

6. With regional computer centers that maintain authorized computer-to-computer interfaces with the department, that are criminal justice agencies or under the management control of a criminal justice agency and that are established by a statute, ordinance or executive order to provide automated data processing services to criminal justice agencies specifically for the purposes of the administration of criminal justice or evaluating the fitness of regional computer center employees who have access to the Arizona criminal justice information system and the national crime information center system.
7. With an individual who asserts a belief that criminal history record information relating to the individual is maintained by an agency or in an information system in this state that is subject to this section. On submission of fingerprints, the individual may review this information for the purpose of determining its accuracy and completeness by making application to the agency operating the system. Rules adopted under this section shall include provisions for administrative review and necessary correction of any inaccurate or incomplete information. The review and challenge process authorized by this paragraph is limited to criminal history record information.
8. With individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement if the agreement specifically authorizes access to data, limits the use of data to purposes for which given and ensures the security and confidentiality of the data consistent with this section.
9. With individuals and agencies for the express purpose of research, evaluative or statistical activities pursuant to an agreement with a criminal justice agency if the agreement specifically authorizes access to data, limits the use of data to research, evaluative or statistical purposes and ensures the confidentiality and security of the data consistent with this section.
10. With the auditor general for audit purposes.
11. With central state repositories of other states for noncriminal justice purposes for dissemination in accordance with the laws of those states.
12. On submission of the fingerprint card, with the department of child safety and a tribal social services agency to provide criminal history record information on prospective adoptive parents for the purpose of conducting the preadoption certification investigation under title 8, chapter 1, article 1 if the department of economic security is conducting the investigation, or with an agency or a person appointed by the court, if the agency or person is conducting the investigation. Information received under this paragraph shall only be used for the purposes of the preadoption certification investigation.
13. With the department of child safety, a tribal social services agency and the superior court for the purpose of evaluating the fitness of custodians or prospective custodians of juveniles, including parents, relatives and prospective guardians. Information received under this paragraph shall only be used for the purposes of that evaluation. The information shall be provided on submission of either:
 - (a) The fingerprint card.
 - (b) The name, date of birth and social security number of the person.
14. On submission of a fingerprint card, provide criminal history record information to the superior court for the purpose of evaluating the fitness of investigators appointed under section 14-5303 or 14-5407, guardians appointed under section 14-5206 or 14-5304 or conservators appointed under section 14-5401.
15. With the supreme court to provide criminal history record information on prospective fiduciaries pursuant to section 14-5651.
16. With the department of juvenile corrections to provide criminal history record information pursuant to section 41-2814.

17. On submission of the fingerprint card, provide criminal history record information to the Arizona peace officer standards and training board or a board certified law enforcement academy to evaluate the fitness of prospective cadets.
18. With the internet sex offender website database established pursuant to section 13-3827.
19. With licensees of the United States nuclear regulatory commission for the purpose of determining whether an individual should be granted unescorted access to the protected area of a commercial nuclear generating station on submission of the subject of record's fingerprints and the prescribed fee.
20. With the state board of education for the purpose of evaluating the fitness of a certificated educator, an applicant for a teaching or administrative certificate or a noncertificated person as defined in section 15-505 if the state board of education or its employees or agents have reasonable suspicion that the educator or person engaged in conduct that would be a criminal violation of the laws of this state or was involved in immoral or unprofessional conduct or that the applicant engaged in conduct that would warrant disciplinary action if the applicant were certificated at the time of the alleged conduct. The information shall be provided on the submission of either:
 - (a) The fingerprint card.
 - (b) The name, date of birth and social security number of the person.
21. With each school district and charter school in this state. The department of education and the state board for charter schools shall provide the department of public safety with a current list of email addresses for each school district and charter school in this state and shall periodically provide the department of public safety with updated email addresses. If the department of public safety is notified that a person who is required to have a fingerprint clearance card to be employed by or to engage in volunteer activities at a school district or charter school has been arrested for or convicted of an offense listed in section 41-1758.03, subsection B or has been arrested for or convicted of an offense that amounts to unprofessional conduct under section 15-550, the department of public safety shall notify each school district and charter school in this state that the person's fingerprint clearance card has been suspended or revoked.
22. With a tribal social services agency and the department of child safety as provided by law, which currently is the Adam Walsh child protection and safety act of 2006 (42 United States Code section 16961), for the purposes of investigating or responding to reports of child abuse, neglect or exploitation. Information received pursuant to this paragraph from the national crime information center, the interstate identification index and the Arizona criminal justice information system network shall only be used for the purposes of investigating or responding as prescribed in this paragraph. The information shall be provided on submission to the department of public safety of either:
 - (a) The fingerprints of the person being investigated.
 - (b) The name, date of birth and social security number of the person.
23. With a nonprofit organization that interacts with children or vulnerable adults for the lawful purpose of evaluating the fitness of all current and prospective employees, contractors and volunteers of the organization. The criminal history record information shall be provided on submission of the applicant fingerprint card and the prescribed fee.
24. With the superior court for the purpose of determining an individual's eligibility for substance abuse and treatment courts in a family or juvenile case.
25. With the governor to provide criminal history record information on prospective gubernatorial nominees, appointees and employees as provided by law.

H. The director shall adopt rules necessary to execute this section.

I. The director, in the manner prescribed by law, shall remove and destroy records that the director determines are no longer of value in the detection or prevention of crime.

J. The director shall establish a fee in an amount necessary to cover the cost of federal noncriminal justice fingerprint processing for criminal history record information checks that are authorized by law for noncriminal justice employment, licensing or other lawful purposes. An additional fee may be charged by the department for state noncriminal justice fingerprint processing. Fees submitted to the department for state noncriminal justice fingerprint processing are not refundable.

K. The director shall establish a fee in an amount necessary to cover the cost of processing copies of department reports, eight by ten inch black and white photographs or eight by ten inch color photographs of traffic accident scenes.

L. Except as provided in subsection O of this section, each agency authorized by this section may charge a fee, in addition to any other fees prescribed by law, in an amount necessary to cover the cost of state and federal noncriminal justice fingerprint processing for criminal history record information checks that are authorized by law for noncriminal justice employment, licensing or other lawful purposes.

M. A fingerprint account within the records processing fund is established for the purpose of separately accounting for the collection and payment of fees for noncriminal justice fingerprint processing by the department. Monies collected for this purpose shall be credited to the account, and payments by the department to the United States for federal noncriminal justice fingerprint processing shall be charged against the account. Monies in the account not required for payment to the United States shall be used by the department in support of the department's noncriminal justice fingerprint processing duties. At the end of each fiscal year, any balance in the account not required for payment to the United States or to support the department's noncriminal justice fingerprint processing duties reverts to the state general fund.

N. A records processing fund is established for the purpose of separately accounting for the collection and payment of fees for department reports and photographs of traffic accident scenes processed by the department. Monies collected for this purpose shall be credited to the fund and shall be used by the department in support of functions related to providing copies of department reports and photographs. At the end of each fiscal year, any balance in the fund not required for support of the functions related to providing copies of department reports and photographs reverts to the state general fund.

O. The department of child safety may pay from appropriated monies the cost of federal fingerprint processing or federal criminal history record information checks that are authorized by law for employees and volunteers of the department, guardians pursuant to section 8-453, subsection A, paragraph 6, the licensing of foster parents or the certification of adoptive parents.

P. The director shall adopt rules that provide for:

1. The collection and disposition of fees pursuant to this section.
2. The refusal of service to those agencies that are delinquent in paying these fees.

Q. The director shall ensure that the following limitations are observed regarding dissemination of criminal justice information obtained from the central state repository or through the Arizona criminal justice information system:

1. Any criminal justice agency that obtains criminal justice information from the central state repository or through the Arizona criminal justice information system assumes responsibility for the security of the information and shall not secondarily disseminate this information to any individual or agency not authorized to receive this information directly from the central state repository or originating agency.

2. Dissemination to an authorized agency or individual may be accomplished by a criminal justice agency only if the dissemination is for criminal justice purposes in connection with the prescribed duties of the agency and not in violation of this section.

3. Criminal history record information disseminated to noncriminal justice agencies or to individuals shall be used only for the purposes for which it was given. Secondary dissemination is prohibited unless otherwise authorized by law.

4. The existence or nonexistence of criminal history record information shall not be confirmed to any individual or agency not authorized to receive the information itself.

5. Criminal history record information to be released for noncriminal justice purposes to agencies of other states shall only be released to the central state repositories of those states for dissemination in accordance with the laws of those states.

6. Criminal history record information shall be released to noncriminal justice agencies of the federal government pursuant to the terms of the federal security clearance information act (P.L. 99-169).

R. This section and the rules adopted under this section apply to all agencies and individuals collecting, storing or disseminating criminal justice information processed by manual or automated operations if the collection, storage or dissemination is funded in whole or in part with monies made available by the law enforcement assistance administration after July 1, 1973, pursuant to title I of the crime control act of 1973, and to all agencies that interact with or receive criminal justice information from or through the central state repository and through the Arizona criminal justice information system.

S. This section does not apply to criminal history record information contained in:

1. Posters, arrest warrants, announcements or lists for identifying or apprehending fugitives or wanted persons.

2. Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public if these records are organized on a chronological basis.

3. Transcripts or records of judicial proceedings if released by a court or legislative or administrative proceedings.

4. Announcements of executive clemency or pardon.

5. Computer databases, other than the Arizona criminal justice information system, that are specifically designed for community notification of an offender's presence in the community pursuant to section 13-3825 or for public informational purposes authorized by section 13-3827.

T. Nothing in this section prevents a criminal justice agency from disclosing to the public criminal history record information that is reasonably contemporaneous to the event for which an individual is currently within the criminal justice system, including information noted on traffic accident reports concerning citations, blood alcohol tests or arrests made in connection with the traffic accident being investigated.

U. In order to ensure that complete and accurate criminal history record information is maintained and disseminated by the central state repository:

1. The booking agency shall take legible ten-print fingerprints of all persons who are arrested for offenses listed in subsection C of this section. The booking agency shall obtain a process control number and provide to the person fingerprinted a document that indicates proof of the fingerprinting and that informs the person that the document must be presented to the court.

2. Except as provided in paragraph 3 of this subsection, if a person is summoned to court as a result of an indictment or complaint for an offense listed in subsection C of this section, the court shall order the person to appear before the county sheriff and provide legible ten-print fingerprints. The county sheriff shall obtain a process control number and provide a document to the person fingerprinted that indicates proof of the fingerprinting and that informs the person that the document must be presented to the court. For the purposes of this paragraph, "summoned" includes a written promise to appear by the defendant on a uniform traffic ticket and complaint.
3. If a person is arrested for a misdemeanor offense listed in subsection C of this section by a city or town law enforcement agency, the person shall appear before the law enforcement agency that arrested the defendant and provide legible ten-print fingerprints. The law enforcement agency shall obtain a process control number and provide a document to the person fingerprinted that indicates proof of the fingerprinting and that informs the person that the document must be presented to the court.
4. The mandatory fingerprint compliance form shall contain the following information:
 - (a) Whether ten-print fingerprints have been obtained from the person.
 - (b) Whether a process control number was obtained.
 - (c) The offense or offenses for which the process control number was obtained.
 - (d) Any report number of the arresting authority.
 - (e) Instructions on reporting for ten-print fingerprinting, including available times and locations for reporting for ten-print fingerprinting.
 - (f) Instructions that direct the person to provide the form to the court at the person's next court appearance.
5. Within ten days after a person is fingerprinted, the arresting authority or agency that took the fingerprints shall forward the fingerprints to the department in the manner or form required by the department.
6. On the issuance of a summons for a defendant who is charged with an offense listed in subsection C of this section, the summons shall direct the defendant to provide ten-print fingerprints to the appropriate law enforcement agency.
7. At the initial appearance or on the arraignment of a summoned defendant who is charged with an offense listed in subsection C of this section, if the person does not present a completed mandatory fingerprint compliance form to the court or if the court has not received the process control number, the court shall order that within twenty calendar days the defendant be ten-print fingerprinted at a designated time and place by the appropriate law enforcement agency.
8. If the defendant fails to present a completed mandatory fingerprint compliance form or if the court has not received the process control number, the court, on its own motion, may remand the defendant into custody for ten-print fingerprinting. If otherwise eligible for release, the defendant shall be released from custody after being ten-print fingerprinted.
9. In every criminal case in which the defendant is incarcerated or fingerprinted as a result of the charge, an originating law enforcement agency or prosecutor, within forty days of the disposition, shall advise the central state repository of all dispositions concerning the termination of criminal proceedings against an individual arrested for an offense specified in subsection C of this section. This information shall be submitted on a form or in a manner required by the department.
10. Dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an individual who is arrested for an offense specified in subsection C of this section or section 8-341, subsection V,

paragraph 3 shall be reported to the central state repository within forty days of the date of the disposition. This information shall be submitted on a form or in a manner specified by rules approved by the supreme court.

11. The state department of corrections or the department of juvenile corrections, within forty days, shall advise the central state repository that it has assumed supervision of a person convicted of an offense specified in subsection C of this section or section 8-341, subsection V, paragraph 3. The state department of corrections or the department of juvenile corrections shall also report dispositions that occur thereafter to the central state repository within forty days of the date of the dispositions. This information shall be submitted on a form or in a manner required by the department of public safety.

12. Each criminal justice agency shall query the central state repository before dissemination of any criminal history record information to ensure the completeness of the information. Inquiries shall be made before any dissemination except in those cases in which time is of the essence and the repository is technically incapable of responding within the necessary time period. If time is of the essence, the inquiry shall still be made and the response shall be provided as soon as possible.

V. The director shall adopt rules specifying that any agency that collects, stores or disseminates criminal justice information that is subject to this section shall establish effective security measures to protect the information from unauthorized access, disclosure, modification or dissemination. The rules shall include reasonable safeguards to protect the affected information systems from fire, flood, wind, theft, sabotage or other natural or man-made hazards or disasters.

W. The department shall make available to agencies that contribute to, or receive criminal justice information from, the central state repository or through the Arizona criminal justice information system a continuing training program in the proper methods for collecting, storing and disseminating information in compliance with this section.

X. Nothing in this section creates a cause of action or a right to bring an action including an action based on discrimination due to sexual orientation.

Y. For the purposes of this section:

1. "Administration of criminal justice" means performance of the detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision or rehabilitation of criminal offenders. Administration of criminal justice includes enforcement of criminal traffic offenses and civil traffic violations, including parking violations, when performed by a criminal justice agency. Administration of criminal justice also includes criminal identification activities and the collection, storage and dissemination of criminal history record information.

2. "Administrative records" means records that contain adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency and that are designed to furnish information to protect the rights of this state and of persons directly affected by the agency's activities.

3. "Arizona criminal justice information system" or "system" means the statewide information system managed by the director for the collection, processing, preservation, dissemination and exchange of criminal justice information and includes the electronic equipment, facilities, procedures and agreements necessary to exchange this information.

4. "Booking agency" means the county sheriff or, if a person is booked into a municipal jail, the municipal law enforcement agency.

5. "Central state repository" means the central location within the department for the collection, storage and dissemination of Arizona criminal history records and related criminal justice information.

6. "Criminal history record information" and "criminal history record" means information that is collected by criminal justice agencies on individuals and that consists of identifiable descriptions and notations of arrests, detentions, indictments and other formal criminal charges, and any disposition arising from those actions, sentencing, formal correctional supervisory action and release. Criminal history record information and criminal history record do not include identification information to the extent that the information does not indicate involvement of the individual in the criminal justice system or information relating to juveniles unless they have been adjudicated as adults.

7. "Criminal justice agency" means either:

(a) A court at any governmental level with criminal or equivalent jurisdiction, including courts of any foreign sovereignty duly recognized by the federal government.

(b) A government agency or subunit of a government agency that is specifically authorized to perform as its principal function the administration of criminal justice pursuant to a statute, ordinance or executive order and that allocates more than fifty percent of its annual budget to the administration of criminal justice. This subdivision includes agencies of any foreign sovereignty duly recognized by the federal government.

8. "Criminal justice information" means information that is collected by criminal justice agencies and that is needed for the performance of their legally authorized and required functions, such as criminal history record information, citation information, stolen property information, traffic accident reports, wanted persons information and system network log searches. Criminal justice information does not include the administrative records of a criminal justice agency.

9. "Disposition" means information disclosing that a decision has been made not to bring criminal charges or that criminal proceedings have been concluded or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of an appellate review of criminal proceedings or executive clemency.

10. "Dissemination" means the written, oral or electronic communication or transfer of criminal justice information to individuals and agencies other than the criminal justice agency that maintains the information. Dissemination includes the act of confirming the existence or nonexistence of criminal justice information.

11. "Management control":

(a) Means the authority to set and enforce:

(i) Priorities regarding development and operation of criminal justice information systems and programs.

(ii) Standards for the selection, supervision and termination of personnel involved in the development of criminal justice information systems and programs and in the collection, maintenance, analysis and dissemination of criminal justice information.

(iii) Policies governing the operation of computers, circuits and telecommunications terminals used to process criminal justice information to the extent that the equipment is used to process, store or transmit criminal justice information.

(b) Includes the supervision of equipment, systems design, programming and operating procedures necessary for the development and implementation of automated criminal justice information systems.

12. "Process control number" means the Arizona automated fingerprint identification system number that attaches to each arrest event at the time of fingerprinting and that is assigned to the arrest fingerprint card, disposition form and other pertinent documents.

13. "Secondary dissemination" means the dissemination of criminal justice information from an individual or agency that originally obtained the information from the central state repository or through the Arizona criminal

justice information system to another individual or agency.

14. "Sexual orientation" means consensual homosexuality or heterosexuality.

15. "Subject of record" means the person who is the primary subject of a criminal justice record.

41-2205. Central state repository

A. The central state repository for the collection, storage and dissemination of criminal history record information is established. The department of public safety shall operate the central state repository pursuant to rules adopted by the department. The department shall conduct annual audits to ensure that each criminal justice agency is complying with rules governing the maintenance and dissemination of criminal history record information.

B. Each criminal justice agency shall report criminal history record information, whether collected manually or by means of an automated system, to the central state repository pursuant to sections 41-1750 and 41-1751.

41-2206. Disciplinary action; system participants

The department may remove any agency, company or individual that fails to conform to the rules adopted pursuant to this article from participation in the system.

BOARD OF DENTAL EXAMINERS

Title 4, Chapter 11, Articles 5-10



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 4, 2022

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

FROM: Council Staff

DATE: September 14, 2022

SUBJECT: BOARD OF DENTAL EXAMINERS
Title 4, Chapter 11, Articles 5-10

Summary

This Five-Year Review Report (5YRR) from the Board of Dental Examiners (Board) relates to rules in Title 4, Chapter 11, Articles 5-10 regarding Dentists, Dental Hygienists, Dental Assistants, and Restricted Permits.

In the previous 5YRR, the Board proposed to amend rules that were inconsistent, unclear, and not understandable by December 2018. For various reasons stated in the report, the Department did not complete the courses of action indicated in the previous 5YRR.

Proposed Action

The Department proposes to amend several rules to be more clear, concise, understandable and effective. The Department indicates it is currently engaged in the rulemaking process to amend the rules and intends to complete the rulemaking by December 2022.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Board cites general and specific statutory authority for the rules under review.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Board believes the actual economic, small business, and consumer impact of the rules is the same as that estimated when the rules were last made effective February 4, 1999 (5 A.A.R. 580), April 2, 2005 (11 A.A.R. 793), and May 5, 2007 (13 A.A.R. 962).

Stakeholders include the Board, licensed dentists, dental hygienists, licensed business entities, dental consultants, and denturists.

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 Board states the rules impose the least burden and probable costs to regulated persons, which are outweighed by the probable benefits of the rules.

Specifically, the Board indicates it is required to protect public health and safety by ensuring that dental professionals are properly educated and experienced to practice dentistry in Arizona. The Board states it weighs the importance of ensuring such regulation in Arizona for public health and safety with the burden of complying with such regulation. The Board believes that the current regulations are commensurate within the dental industry as a whole and the least necessary to protect public health and safety by ensuring dental professionals have and maintain the appropriate qualifications to practice safely. Thus, the Board believes that the benefits of the rules outweigh the probable costs and are the least burdensome on the regulated community.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Board indicates it has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Board indicates that the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Board indicates the rules are generally consistent with other rules and statutes except for the following rules:

- R4-11-502 - Affiliated Practice;
- R4-11-601 - Duties and Qualifications;

- **R4-11-607** - Duties of the Dental Hygiene Committee;
- **R4-11-609** - Affiliated Practice;
- **R4-11-701** - Procedures and Functions Performed by a Dental Assistant under Supervision; and
- **R4-11-903** - Recognition of a Charitable Dental Clinic Organization.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Board indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Board 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 Board indicates 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?**

Not applicable. The Board indicates the rules were adopted prior to July 29, 2010.

11. **Conclusion**

This 5YRR relates to rules in Title 4, Chapter 11, Articles 5-10 regarding Dentists, Dental Hygienists, Dental Assistants, and Restricted Permits. The Board indicates the rules are generally clear, concise, understandable, consistent, effective, and enforced as written. The Board intends to submit a rulemaking to the Council by December 2022 to address rules that are not clear, consistent, understandable, or effective.

Council staff finds the Board submitted a 5YRR that meets the requirements of A.R.S. § 41-1056. Council staff recommends approval of this report.



Arizona State Board of Dental Examiners
"Caring for the Public's Dental Health and Professional Standards"

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July 18, 2022

Nicole Sornsin, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Ave., Ste. 402
Phoenix, AZ 85007

RE: Five-year-review Report for 4 A.A.C. 11, Articles 5, 6, 7, 8, 9 and 10

In compliance with A.R.S. § 41-1056(A), the Arizona State Board of Dental Examiners (Board) has reviewed all of the rules in A.A.C. Title 4, Chapter 11, Articles 5, 6, 7, 8, 9 and 10 and submits the enclosed report to the Council for approval. The Board certifies that it is in compliance with A.R.S. § 41-1091. The Board contact person for this report is Ryan Edmonson, Executive Director, who may be reached at (602) 542-4493.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan P. Edmonson".

Ryan P. Edmonson
Executive Director
Arizona State Board of Dental Examiners

Enclosures: Five-Year Rule Review
Five-Year Rule Review Summary Table
Board's Current Statutes and Rules

Arizona State Board of Dental Examiners

4 A.A.C. 11, Articles 5, 6, 7, and 9

May 2022

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INTRODUCTION

The Arizona Board of Dental Examiners protects the health, safety and welfare of the citizens of Arizona by regulating the practice of dentistry. The rules in 4 A.A.C. 11, Article 5, provides rules relating to Dentists. The rules in 4 A.A.C. 11, Article 6, provides rules relating to Dental Hygienists. The rules in 4 A.A.C. 11, Article 7, provides rules relating to Dental Assistants. The rules in 4 A.A.C. 11, Article 9, provides rules relating to Restricted Permits.

INFORMATION THAT IS IDENTICAL FOR ALL RULES

1. **Effectiveness in Achieving Objectives**
All the rules reviewed are effective in achieving their stated objectives.

2. **Written Criticisms of the Rules Received in the Past Five Years**
The agency has not received any written criticisms of the rules in the past five years.

3. **Authorization of the Rules by Existing Statutes**
The agency's general rulemaking authority is found in A.R.S. §§ 32-1201(21)(C), (t), and (u), and 32-1207(A) (1) and (B) (3).

4. **Consistency with Statutes and Other Rules Made by the Agency**
The rules reviewed are consistent with the statutes for the agency, namely A.R.S. Title 32, Chapter 18. In addition, the rules are consistent both internally and with relation to the agency's other rules, with the exception of R4-11-502, R4-11-601, R4-11-607, R4-11-609, R4-11-701, and R4-11-903 whose consistency is addressed individually below.

- 4a. **Enforcement**
The rules are enforced as written without incident.

5. **Clarity, Conciseness, and Understandability of the Rules**

The agency has analyzed the rules and has found the rules to be clear, concise, and understandable.

6. **Economic, Small Business, and Consumer Impact Comparison**

The Board believes the actual economic, small business, and consumer impact of the rules is the same as that estimated when the rules were last made effective February 4, 1999 (5 A.A.R. 580), April 2, 2005 (11 A.A.R. 793), and May 5, 2007 (13 A.A.R. 962).

During the last year, the Board collected \$619,720 in fees. Ten percent of this was deposited in the state's general fund. The Board was appropriated \$1,815,800 and is authorized to have 11 FTE positions.

The main costs are born by the agency and include staff time to process new and renewal applications. The Board currently licenses approximately 5,464 dentists, 5,124 dental hygienists, 553 business entities, 21 dental consultants, zero restricted permits, and 12 denturists, totaling approximately 10,621 dental professionals and 553 business entities compared to approximately 9,293 dental professionals as reported during the Board's last 5-year rule review of Articles 5, 6, 7, and 9, in 2017. Our analysis indicates that establishing standards of practice is beneficial to society. Our statutes and rules exist to protect the public health. These administrative mandates become the standard of practice within the profession. Relying on a single standard promotes consistency of service and improvement of outcomes as well as negating the confusion that comes from either too many or nonexistent standards. Therefore, we estimate the economic impact of the reviewed rules is minimal.

7. **Analysis Submitted by Another Person Regarding the Rules' Impact on this State's Business Competitiveness as Compared to the Competitiveness of Businesses in Other States**

No analysis was submitted to the agency.

9. **Probable Benefits Outweigh Probable Costs / Rules Impose Least Burden on Regulated Persons**

The Board is required to protect public health and safety by ensuring that dental professionals are properly educated and experienced to practice dentistry in Arizona. The Board weighs the importance of ensuring such regulation in Arizona for public health and safety with the burden of complying with such regulation. The Board believes that the current regulations are commensurate within the dental industry as a whole and the least necessary to protect public health and safety by ensuring dental professionals have and maintain the appropriate qualifications to practice safely. Thus, the Board believes that the benefits of the rules outweigh the probable costs and are the least burdensome on the regulated community.

10. **Stringency Compared with Corresponding Federal Law**

These rules do not have corresponding federal law.

11. **For Rules Adopted After July 29, 2010 that Require Issuance of a Regulatory Permit, License, or Agency Authorization, Whether the Rule Complies with the General Permit Requirement in A.R.S. § 41-1037.**

None of the rules reviewed were made after July 29, 2010.

INDIVIDUAL ANALYSIS

R4-11-501. Dentist of Record

Objective

The objective of this Section is to specify it is the dentist of record who is responsible for a patient's care and treatment and maintenance of records of the care and treatment. This protects public health by clarifying responsibility.

3. Authorization of the Rules by Existing Statute

The agency's specific rulemaking authority is found in A.R.S. § 32-1207(A)(1).

8. Completion of the Previous Five-Year –Review Report Process

In the previous 5YRR, the Board indicated R4-11-501(C), as written, is impossible for the Board to enforce. Rather, it is a statement of best practice with which the Board hopes a dentist complies. The Board indicated that it intended to update the rule by December 2018. However, the Board did not complete the previous course of action because it determined that any dentist that did not ensure that a new dentist of record was listed in the patient record, could be held accountable for not maintaining accurate patient records. Therefore, no amendments are necessary and the Board does not propose any course of action at this time.

12. Proposed Course of Action

The Board is not proposing any course of action at this time.

R4-11-502. Affiliated Practice

Objective

The objective of this Section is to establish requirements for and limitations on a dentist who enters an affiliated-practice relationship with a dental hygienist. This protects public health by ensuring a dentist is able to supervise treatment provided under an affiliated-practice agreement.

3. Authorization of the Rules by Existing Statute

The agency's specific rulemaking authority is found in A.R.S. § 1289.01(G).

4. Consistency with Statutes and Other Rules Made by the Agency

This rule needs to be updated to account for statutory changes as discussed below.

8. Completion of the Previous Five-Year –Review Report Process

In the previous 5YRR, the Board indicated that due to statutory changes made under Laws 2017, Chapter 174 and Laws 2015, Chapter 196, internal cross references are

incorrect. The Board indicated that it intended to update the rule by December 2018. However, the Board did not complete the previous course of action because this is not a substantive concern requiring immediate Board action in light of the Board's priorities and limited resources.

12. Proposed Course of Action

The Board is currently engaged in the rulemaking process to amend this rule to update cross references and intends to complete the rulemaking by December 2022.

R4-11-601. Duties and Qualifications

Objective

The objective of this Section is to specify procedures a dental hygienist may perform and limitations on performance. This protects public health by ensuring a dental hygienist performs only procedures for which the dental hygienist is qualified.

3. Authorization of the Rules by Existing Statute

The agency's specific rulemaking authority is found in A.R.S. § 32-1281.

4. Consistency with Statutes and Other Rules Made by the Agency

This rule needs to be updated to account for statutory changes as discussed below.

8. Completion of the Previous Five-Year –Review Report Process

In the previous 5YRR, the Board indicated that due to statutory changes made under Laws 2017, Chapter 174 and Laws 2015, Chapter 196, R4-11-601(E) and (F) are inconsistent with A.R.S. § 32-1281 and internal cross references are incorrect and need to be updated. The Board indicated that it intended to update the rule by December 2018. However, the Board did not complete the previous course of action because this is not a substantive concern requiring immediate Board action in light of the Board's priorities and limited resources.

12. Proposed Course of Action

The Board is currently engaged in the rulemaking process to amend this rule to update cross references and intends to complete the rulemaking by December 2022.

R4-11-602. Care of Homebound Patients

Objective

The objective of this Section is to prescribe limits on the treatment a dental hygienist may provide to a homebound patient. This protects homebound patients by ensuring a dental hygienist provides only treatments prescribed by the dentist of record.

3. Authorization of the Rules by Existing Statute

The agency's specific rulemaking authority is found in A.R.S. § 32-1207(A)(1)(a).

8. Completion of the Previous Five-Year –Review Report Process

No course of action was proposed in the Previous 5YRR.

12. Proposed Course of Action
The Board is not proposing any course of action at this time.

R4-11-603. Limitation on Number Supervised

Objective

The objective of this Section is to establish the limit on number of dental hygienists a dentist may supervise. This protects public health by ensuring a dentist is able to provide the required degree of supervision for dental hygienists.

3. Authorization of the Rules by Existing Statute
The agency's specific rulemaking authority is found in A.R.S. § 32-1207(A)(1)(a).
8. Completion of the Previous Five-Year –Review Report Process
No Course of action was proposed in the Previous 5YRR.
12. Proposed Course of Action
The Board is not proposing any course of action at this time.

R4-11-604. Selection Committee and Process

Objective

The objective of this Section is to specify the membership of a committee charged with selecting and recommending individuals for the dental hygiene committee. This enables the Board to fulfill its statutory responsibility to receive assistance and advice from dental hygienists in matters relating to their regulation.

3. Authorization of the Rules by Existing Statute
The agency's specific rulemaking authority is found in A.R.S. § 32-1282(B).
8. Completion of the Previous Five-Year –Review Report Process
No course of action was proposed in the previous 5YRR.
12. Proposed Course of Action
The Board is not proposing any course of action at this time.

R4-11-605. Dental Hygiene Committee

Objective

The objective of this Section is to establish membership, term limits, and leadership of the dental hygiene committee. This enables the Board to fulfill its statutory responsibility to receive assistance and advice from dental hygienists in matters relating to their regulation.

3. Authorization of the Rules by Existing Statute
The agency's specific rulemaking authority is found in A.R.S. § 32-1282(B).

8. Completion of the Previous Five-Year –Review Report Process
In the previous 5YRR, the Board indicated that the Board believes use of the term “public member” rather than “lay person” would be more understandable. The Board indicated that it intended to update the rule by December 2018. The Board did not complete the previous course of action because upon further review, the Board determined that no further clarification was necessary.
12. Proposed Course of Action
The Board is not proposing any course of action at this time.

R4-11-606. Candidate Qualifications and Submissions

Objective

The objective of this Section is to specify who may seek to become a member of the dental hygiene committee and the criteria the Board uses to make selections. This enables the Board to fulfill its statutory responsibility to receive assistance and advice from dental hygienists in matters relating to their regulation.

3. Authorization of the Rules by Existing Statute
The agency’s specific rulemaking authority is found in A.R.S. § 32-1282(B).
8. Completion of the Previous Five-Year –Review Report Process
No course of action was proposed in the previous 5YRR.
12. Proposed Course of Action
The Board is not proposing any course of action at this time.

R4-11-607. Duties of Dental Hygiene Committee

Objective

The objective of this Section is to specify the duties of the dental hygiene committee. This enables the Board to fulfill its statutory.

3. Authorization of the Rules by Existing Statute
The agency’s specific rulemaking authority is found in A.R.S. § 32-1282(B).
4. Consistency with Statutes and Other Rules Made by the Agency
This rule needs to be updated to account for statutory changes as discussed below.
8. Completion of the Previous Five-Year –Review Report Process
In the previous 5YRR, the Board indicated that in R4-11-607(B)(2) the reference to suture placement is inconsistent with A.R.S. § 32-1281 as amended under Laws 2015, Chapter 196. Due to statutory changes made under Laws 2015, Chapter 196, internal cross references are incorrect and need to be updated. The Board indicated that it intended to update the rule by December 2018. However, the Board did not complete the previous course of action because this is not a substantive concern requiring immediate Board action in light of the Board’s priorities and limited resources.

12. Proposed Course of Action
The Board is currently engaged in the rulemaking process to amend this rule to update cross references and intends to complete the rulemaking by December 2022.

R4-11-608. Dental Hygiene Consultants

Objective

The objective of this Section is to specify the activities a dental-hygiene consultant may perform. This enables the Board to fulfill its statutory responsibility to receive assistance and advice from dental hygienists in matters relating to their regulation.

3. Authorization of the Rules by Existing Statute
The agency's specific rulemaking authority is found in A.R.S. § 32-1282(B).
8. Completion of the Previous Five-Year –Review Report Process
No course of action was proposed in the previous 5YRR.
12. Proposed Course of Action
The Board is currently engaged in the rulemaking process to update references to the Western Regional Examining Board and intends to complete this rulemaking by December 2022.

R4-11-609. Affiliated Practice

Objective

The objective of this Section is to specify the requirements for a dental hygienist and dentist to enter an affiliated-practice relationship. This protects public health by ensuring dental hygiene services under an affiliated-practice relationship are properly supervised.

3. Authorization of the Rules by Existing Statute
The agency's specific rulemaking authority is found in A.R.S. § 32-1289.01.
4. Consistency with Statutes and Other Rules Made by the Agency
This rule needs to be updated to account for statutory changes as discussed below.
8. Completion of the Previous Five-Year –Review Report Process
In the previous 5YRR, the Board indicated that R4-11-609 is inconsistent with A.R.S. § 32-1289.01 as amended under Laws 2017, Chapter 174. All cross references to A.R.S. § 32-1289 are incorrect and the provisions cited in subsection (C) no longer exist. The Board indicated that it intended to update the rule by December 2018. The Board did not complete the previous course of action because this is not a substantive concern requiring immediate Board action in light of the Board's priorities and limited resources.
12. Proposed Course of Action
The Board is currently engaged in the rulemaking process to amend this rule to update cross references and intends to complete the rulemaking y December 2022.

R4-11-701. Procedures and Functions Performed by a Dental Assistant under Supervision

Objective

The objective of this Section is to specify the procedures and functions a dental assistant may perform under direct or general supervision of a dentist. This protects public health by ensuring services are provided only by someone with the appropriate skills and supervision.

3. Authorization of the Rules by Existing Statute
The agency's specific rulemaking authority is found in A.R.S. §§ 32-1201(4), 32-1207(A)(1)(a), and 32-1291.
4. Consistency with Statutes and Other Rules Made by the Agency
This rule needs to be updated to account for statutory changes as discussed below.
8. Completion of the Previous Five-Year –Review Report Process
In the previous 5YRR the Board indicated that R4-11-701(A) is inconsistent with A.R.S. § 32-1291.01, which was added as part of Laws 2015, Chapter 196. Some of the procedures and functions listed in R4-11-701(A) for dental assistants are now specified as appropriate for an expanded-function dental assistant. The Board indicated that it intended to update the rule by December 2018. However, the Board did not complete the previous course of action because upon further review, the Board determined that the rule was consistent with A.R.S. 32-1291.01.
12. Proposed Course of Action
The Board is currently engaged in the rulemaking process to amend this rule to update grammar and formatting and intends to complete the rulemaking by December 2022.

R4-11-702. Limitations on Procedures or Functions Performed by a Dental Assistant under Supervision

Objective

The objective of this Section is to specify procedures and functions a dental assistant is not allowed to perform. This protects public health by ensuring services are provided only by someone with the appropriate skills.

3. Authorization of the rules by existing statute
The agency's specific rulemaking authority is found in A.R.S. §§ 32-1201(4), 32-1207(A)(1)(a), and 32-1291.
8. Completion of the Previous Five-Year –Review Report Process
No course of action was proposed in the previous 5YRR.
12. Proposed Course of Action
The Board is currently engaged in the rulemaking process to update grammar and formatting and intends to complete the rulemaking by December 2022.

R4-11-901. Application for Restricted Permit

Objective

The objective of this Section is to specify the information required in an application for a restricted permit. This creates efficiency in the Board's procedures by ensuring an applicant is able to submit a complete application.

3. Authorization of the rules by existing statute
The agency's specific rulemaking authority is found in A.R.S. §§ 32-1237, 32-1239, and 32-1292.
8. Completion of the Previous Five-Year –Review Report Process
No course of action was proposed in the previous 5YRR.
12. Proposed Course of Action
The Board is currently engaged in the rulemaking process to make formatting and grammatical changes to the rule and intends to complete the rulemaking by December 2022.

R4-11-902. Issuance of Restricted Permit

Objective

The objective of this Section is to establish the criteria the Board uses to determine whether a charitable dental clinic or organization is qualified to employ a dentist or dental hygienist not licensed in Arizona. This ensures restricted permits are issued consistent with statute.

3. Authorization of the rules by existing statute
The agency's specific rulemaking authority is found in A.R.S. §§ 32-1237, 32-1238, 32-1239, and 32-1292.
8. Completion of the Previous Five-Year –Review Report Process
No course of action was proposed in the previous 5YRR.
12. Proposed Course of Action
The Board is not proposing any course of action at this time.

R4-11-903. Recognition of a Charitable Dental Clinic Organization

Objective

The objective of this Section is to specify the information a charitable dental clinic or organization is required to provide to the Board to enable the Board to determine whether the clinic or organization is charitable. This ensures restricted permits are issued consistent with statute.

3. Authorization of the rules by existing statute
The agency's specific rulemaking authority is found in A.R.S. §§ 32-1237 and 32-1239.
4. Consistency with Statutes and Other Rules Made by the Agency
This rule could be updated to account for statutory references as discussed below.

8. Completion of the Previous Five-Year –Review Report Process
In the previous 5YRR, the Board indicated that the heading of this Section is incorrect. Both A.R.S. §§ 32-1237 and 32-1239 reference to a charitable dental clinic or organization. The Board indicated that it intended to update the rule by December 2018. The Board did not complete the previous course of action because this is not a substantive concern requiring immediate Board action in light of the Board’s priorities and limited resources.

12. Proposed Course of Action
The Board is not proposing any course of action at this time.

R4-11-904. Determination of Minimum Rate

Objective

The objective of this Section is to specify the information the Board uses to determine whether a charitable dental clinic or organization is meeting the statutory requirement to provide the services without profit. This ensures restricted permits are issued consistent with statute.

3. Authorization of the rules by existing statute
The agency’s specific rulemaking authority is found in A.R.S. §§ 32-1237(1) and 32-1292(A)(1).

8. Completion of the Previous Five-Year –Review Report Process
No course of action was proposed in the previous 5YRR.

12. Proposed Course of Action
The Board is not proposing any course of action at this time.

ARIZONA STATE BOARD OF DENTAL EXAMINERS

2022 Five-Year Review, Title 4, Chapter 11

Articles 5, 6, 7, and 9

Rule No.	Title	Last Revision	Eff.	Enf.	Consist.	Clear/Concise/ understandable	Probable benefits/ Least Burden	ARS Authority	EIS Comp.	Previous and Current Proposed Course of Action
R4-11-501	Dentist of Record	April 2, 2005	Y	Y	Y	Y	Y	A.R.S. § 32-1207(A)(1)	<p>The Board currently licenses 5,464 dentists, 5,124 dental hygienists, and 21 dental consultants, certifies 12 denturists, and registers 553 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,815,800 during FY22. There is no change from the economic impact the Board anticipated in the previous rulemaking.</p> <p>During FY21, the Board collected \$619,720 in fees. Ten percent of this was deposited in</p>	<p>In the previous 5YRR, the Board indicated:</p> <p>R4-11-501(C): As written, it is impossible for the Board to enforce this subsection. Rather, it is a statement of best practice with which the Board hopes a dentist complies.</p> <p>The Board indicated that it intended to update the rule by December 2018.</p> <p>The Board did not complete the previous course of action because it determined that any dentist that did not ensure that a new dentist of record was listed in the patient record, could be held accountable for not maintaining accurate patient records. Therefore, no amendments are necessary and the Board does not</p>

									the state's general fund.	propose any course of action at this time.
R4-11-502	Affiliated Practice	May 5, 2007	Y	Y	N	Y	Y	A.R.S. § 32-1289.01(G)	<p>The Board currently licenses 5,464 dentists, 5,124 dental hygienists, and 21 dental consultants, certifies 12 denturists, and registers 553 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,815,800 during FY22. There is no change from the economic impact the Board anticipated in the previous rulemaking.</p> <p>During FY21, the Board collected \$619,720 in fees. Ten percent of this was deposited in the state's general fund.</p>	<p>In the previous 5YRR, the Board indicated:</p> <p>Because of statutory changes made under Laws 2017, Chapter 174 and Laws 2015, Chapter 196, internal cross references are incorrect.</p> <p>The Board indicated that it intended to update the rule by December 2018.</p> <p>The Board did not complete the previous course of action because this is not a substantive concern requiring immediate Board action in light of the Board's priorities and limited resources. However, the Board is currently engaged in the rulemaking process to amend this rule to update cross references.</p>
R4-11-601	Duties and Qualifications	May 5, 2007	Y	Y	N	Y	Y	A.R.S. § 32-1281	The Board currently licenses 5,464 dentists, 5,124 dental	In the previous 5YRR, the Board indicated:

									<p>hygienists, and 21 dental consultants, certifies 12 denturists, and registers 553 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,815,800 during FY22. There is no change from the economic impact the Board anticipated in the previous rulemaking.</p> <p>During FY21, the Board collected \$619,720 in fees. Ten percent of this was deposited in the state's general fund.</p>	<p>R4-11-601(E) and (F) are inconsistent with A.R.S. § 32-1281 as amended under Laws 2015, Chapter 196.</p> <p>Because of statutory changes made under Laws 2017, Chapter 174 and Laws 2015, Chapter 196, internal cross references are incorrect and need to be updated. The Board indicated that it intended to update the rule by December 2018.</p> <p>The Board did not complete the previous course of action because this is not a substantive concern requiring immediate Board action in light of the Board's priorities and limited resources. However, the Board is currently engaged in the rulemaking process to amend this rule to update cross references</p>
R4-11-602	Care of Homebound Patients	February 4, 1999	Y	Y	Y	Y	Y	A.R.S. § 32-1207(A)(1)(a)	<p>The Board currently licenses 5,464 dentists, 5,124 dental hygienists, and 21 dental consultants, certifies 12 denturists, and</p>	<p>No Course of action was proposed in the Previous 5YRR.</p> <p>The Board is not proposing any course of action at this time.</p>

									<p>registers 553 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,815,800 during FY22. There is no change from the economic impact the Board anticipated in the previous rulemaking.</p> <p>During FY21, the Board collected \$619,720 in fees. Ten percent of this was deposited in the state's general fund.</p>	
R4-11-603	Limitation on Number Supervised	February 4, 1999	Y	Y	Y	Y	Y	A.R.S. § 32-1207(A)(1)(a)	<p>The Board currently licenses 5,464 dentists, 5,124 dental hygienists, and 21 dental consultants, certifies 12 denturists, and registers 553 business entities. The Board is authorized to have 11 FTEs and was appropriated</p>	<p>No course of action was proposed in the previous 5YRR.</p> <p>The Board is not proposing any course of action at this time.</p>

									<p>\$1,815,800 during FY22. There is no change from the economic impact the Board anticipated in the previous rulemaking.</p> <p>During FY21, the Board collected \$619,720 in fees. Ten percent of this was deposited in the state's general fund.</p>	
R4-11-604	Selection Committee and Process	February 4, 1999	Y	Y	Y	Y	Y	A.R.S. § 32-1282(B)	<p>The Board currently licenses 5,464 dentists, 5,124 dental hygienists, and 21 dental consultants, certifies 12 denturists, and registers 553 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,815,800 during FY22. There is no change from the economic impact the Board anticipated in the</p>	<p>No course of action was proposed in the previous 5YRR.</p> <p>The Board is not proposing any course of action at this time.</p>

									<p>previous rulemaking.</p> <p>During FY21, the Board collected \$619,720 in fees. Ten percent of this was deposited in the state's general fund.</p>	
R4-11-605	Dental Hygiene Committee	February 4, 1999	Y	Y	Y	Y	Y	A.R.S. § 32-1282(B)	<p>The Board currently licenses 5,464 dentists, 5,124 dental hygienists, and 21 dental consultants, certifies 12 denturists, and registers 553 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,815,800 during FY22. There is no change from the economic impact the Board anticipated in the previous rulemaking.</p> <p>During FY21, the Board collected \$619,720 in fees.</p>	<p>In the previous 5YRR, the Board indicated:</p> <p>R4-11-605(A)(4): The Board believes use of the term "public member" rather than "lay person" would be more understandable.</p> <p>The Board indicated that it intended to update the rule by December 2018.</p> <p>The Board did not complete the previous course of action because upon further review, the Board determined that no further clarification was necessary.</p>

									Ten percent of this was deposited in the state's general fund.	
R4-11-606	Candidate Qualifications and Submissions	February 4, 1999	Y	Y	Y	Y	Y	A.R.S. § 32-1282(B)	<p>The Board currently licenses 5,464 dentists, 5,124 dental hygienists, and 21 dental consultants, certifies 12 denturists, and registers 553 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,815,800 during FY22. There is no change from the economic impact the Board anticipated in the previous rulemaking.</p> <p>During FY21, the Board collected \$619,720 in fees. Ten percent of this was deposited in the state's general fund.</p>	<p>No course of action was proposed in the previous 5YRR.</p> <p>The Board is not proposing any course of action at this time.</p>
R4-11-607	Duties of the Dental	February 4, 1999	Y	Y	N	Y	Y	A.R.S. § 32-1282(B)	The Board currently licenses	In the previous 5YRR, the Board indicated:

	Hygiene Committee								<p>5,464 dentists, 5,124 dental hygienists, and 21 dental consultants, certifies 12 denturists, and registers 553 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,815,800 during FY22. There is no change from the economic impact the Board anticipated in the previous rulemaking.</p> <p>During FY21, the Board collected \$619,720 in fees. Ten percent of this was deposited in the state's general fund.</p>	<p>R4-11-607(B)(2): The reference to suture placement is inconsistent with A.R.S. § 32-1281 as amended under Laws 2015, Chapter 196.</p> <p>Because of statutory changes made under Laws 2015, Chapter 196, internal cross references are incorrect and need to be updated. The Board indicated that it intended to update the rule by December 2018.</p> <p>The Board did not complete the previous course of action because this is not a substantive concern requiring immediate Board action in light of the Board's priorities and limited resources. However, the Board is currently engaged in the rulemaking process to amend this rule to update cross references</p>
R4-11-608	Dental Hygiene Consultants	February 4, 1999	Y	Y	Y	Y	Y	A.R.S. § 32-1282(B)	<p>The Board currently licenses 5,464 dentists, 5,124 dental hygienists, and 21 dental consultants,</p>	<p>No course of action was proposed in the previous 5YRR.</p> <p>The Board is currently engaged in the rulemaking</p>

									<p>certifies 12 denturists, and registers 553 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,815,800 during FY22. There is no change from the economic impact the Board anticipated in the previous rulemaking.</p> <p>During FY21, the Board collected \$619,720 in fees. Ten percent of this was deposited in the state's general fund.</p>	process to update references to the Western Regional Examining Board.
R4-11-609	Affiliated Practice	May 5, 2007	Y	Y	N	Y	Y	A.R.S. § 32-1289.01	<p>The Board currently licenses 5,464 dentists, 5,124 dental hygienists, and 21 dental consultants, certifies 12 denturists, and registers 553 business entities. The Board is authorized to have</p>	<p>In the previous 5YRR, the Board indicated:</p> <p>R4-11-609 is inconsistent with A.R.S. § 32-1289.01 as amended under Laws 2017, Chapter 174. All cross references to A.R.S. § 32-1289 are incorrect and the provisions cited in subsection (C) no longer exist.</p>

									<p>11 FTEs and was appropriated \$1,815,800 during FY22. There is no change from the economic impact the Board anticipated in the previous rulemaking.</p> <p>During FY21, the Board collected \$619,720 in fees. Ten percent of this was deposited in the state's general fund.</p>	<p>The Board indicated that it intended to update the rule by December 2018.</p> <p>The Board did not complete the previous course of action because this is not a substantive concern requiring immediate Board action in light of the Board's priorities and limited resources. However, the Board is currently engaged in the rulemaking process to amend this rule to update cross references.</p>
R4-11-701	Procedures and Functions Performed by a Dental Assistant under Supervision	February 4, 1999	Y	Y	N	Y	Y	A.R.S. §§ 32-1201(4), 32-1207(A)(1)(a), and 32-1291	<p>The Board currently licenses 5,464 dentists, 5,124 dental hygienists, and 21 dental consultants, certifies 12 denturists, and registers 553 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,815,800 during FY22. There is no change from the economic impact</p>	<p>In the previous 5YRR the Board indicated:</p> <p>R4-11-701(A) is inconsistent with A.R.S. § 32-1291.01, which was added as part of Laws 2015, Chapter 196. Some of the procedures and functions listed in R4-11-701(A) for dental assistants are now specified as appropriate for an expanded-function dental assistant.</p> <p>The Board indicated that it intended to update the rule by December 2018.</p>

									<p>the Board anticipated in the previous rulemaking.</p> <p>During FY21, the Board collected \$619,720 in fees. Ten percent of this was deposited in the state's general fund.</p>	<p>The Board did not complete the previous course of action because upon further review, the Board determined that the rule was consistent with A.R.S. 32-1291.01. However, the Board is currently engaged in the rulemaking process to amend this rule to update grammar and formatting.</p>
R4-11-702	Limitation on Procedures or Functions Performed by a Dental Assistant under Supervision	February 4, 1999	Y	Y	Y	Y	Y	A.R.S. §§ 32-1201(4), 32-1207(A)(1)(a), and 32-1291	<p>The Board currently licenses 5,464 dentists, 5,124 dental hygienists, and 21 dental consultants, certifies 12 denturists, and registers 553 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,815,800 during FY22. There is no change from the economic impact the Board anticipated in the previous rulemaking.</p>	<p>No course of action was proposed in the previous 5YRR.</p> <p>The Board is currently engaged in the rulemaking process to update grammar and formatting.</p>

									During FY21, the Board collected \$619,720 in fees. Ten percent of this was deposited in the state's general fund.	
R4-11-901	Application for Restricted Permit	April 2, 2005	Y	Y	Y	Y	Y	A.R.S. §§ 32-1237, 32-1239, and 32-1292	<p>The Board currently licenses 5,464 dentists, 5,124 dental hygienists, and 21 dental consultants, certifies 12 denturists, and registers 553 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,815,800 during FY22. There is no change from the economic impact the Board anticipated in the previous rulemaking.</p> <p>During FY21, the Board collected \$619,720 in fees. Ten percent of this was deposited in</p>	<p>No course of action was proposed in the previous 5YRR.</p> <p>The Board is currently engaged in the rulemaking process to make formatting and grammatical changes to the rule.</p>

									the state's general fund.	
R4-11-902	Issuance of Restricted Permit	April 2, 2005	Y	Y	Y	Y	Y	A.R.S. §§ 32-1237, 32-1238, 32-1239, and 32-1292	<p>The Board currently licenses 5,464 dentists, 5,124 dental hygienists, and 21 dental consultants, certifies 12 denturists, and registers 553 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,815,800 during FY22. There is no change from the economic impact the Board anticipated in the previous rulemaking.</p> <p>During FY21, the Board collected \$619,720 in fees. Ten percent of this was deposited in the state's general fund.</p>	<p>No course of action was proposed in the previous 5YRR.</p> <p>The Board is not proposing any course of action at this time.</p>
R4-11-903	Recognition of a Charitable Dental Clinic Organization	February 4, 1999	Y	Y	N	Y	Y	A.R.S. §§ 32-1237 and 32-1239	The Board currently licenses 5,464 dentists, 5,124 dental	In the previous 5YRR, the Board indicated:

									<p>hygienists, and 21 dental consultants, certifies 12 denturists, and registers 553 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,815,800 during FY22. There is no change from the economic impact the Board anticipated in the previous rulemaking.</p> <p>During FY21, the Board collected \$619,720 in fees. Ten percent of this was deposited in the state's general fund.</p>	<p>R4-11-903: The heading of this Section is incorrect. Both A.R.S. §§ 32-1237 and 32-1239 reference to a charitable dental clinic or organization.</p> <p>The Board indicated that it intended to update the rule by December 2018.</p> <p>The Board did not complete the previous course of action because this is not a substantive concern requiring immediate Board action in light of the Board's priorities and limited resources.</p>
R4-11-904	Determination of Minimum Rate	April 2, 2005	Y	Y	Y	Y	Y	A.R.S. §§ 32-1237(1) and 32-1292(A)(1)	<p>The Board currently licenses 5,464 dentists, 5,124 dental hygienists, and 21 dental consultants, certifies 12 denturists, and registers 553 business entities.</p>	<p>No course of action was proposed in the previous 5YRR.</p> <p>The Board is not proposing any course of action at this time.</p>

									<p>The Board is authorized to have 11 FTEs and was appropriated \$1,815,800 during FY22. There is no change from the economic impact the Board anticipated in the previous rulemaking.</p> <p>During FY21, the Board collected \$619,720 in fees. Ten percent of this was deposited in the state's general fund.</p>	
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ARIZONA ADMINISTRATIVE CODE (Rules)

Title 4. Professions and Occupations

Chapter 11. State Board of Dental Examiners

ARTICLE 1. DEFINITIONS

R4-11-101. Definitions

The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:

“Analgesia” means a state of decreased sensibility to pain produced by using nitrous oxide (N₂O) and oxygen (O₂) with or without local anesthesia.

“Application” means, for purposes of Article 3 only, forms designated as applications and all documents and additional information the Board requires to be submitted with an application.

“Business Entity” means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213(J).

“Calculus” means a hard mineralized deposit attached to the teeth.

“Certificate holder” means a denturist who practices denture technology under A.R.S. Title 32, Chapter 11, Article 5.

“Charitable Dental Clinic or Organization” means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental or dental hygiene services.

“Clinical evaluation” means a dental examination of a patient named in a complaint regarding the patient’s dental condition as it exists at the time the examination is performed.

“Closed subgingival curettage” means the removal of the inner surface of the soft tissue wall of a periodontal pocket in a situation where a flap of tissue has not been intentionally or surgically opened.

“Controlled substance” has the meaning prescribed in A.R.S. § 36-2501(A)(3).

“Credit hour” means one clock hour of participation in a recognized continuing dental education program.

“Deep sedation” is a drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is maintained.

“Dental laboratory technician” or “dental technician” has the meaning prescribed in A.R.S. § 32-1201(7).

“Dentist of record” means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.

“Designee” means a person to whom the Board delegates authority to act on the Board’s behalf regarding a particular task specified by this Chapter.

“Direct supervision” means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant’s work.

“Disabled” means a dentist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism due to a permanent medical disability and based on a physician’s order.

“Dispense for profit” means selling a drug or device for any amount above the administrative overhead costs to inventory.

“Documentation of attendance” means documents that contain the following information:

Name of sponsoring entity;

Course title;

Number of credit hours;

Name of speaker; and

Date, time, and location of the course.

“Drug” means:

Articles recognized, or for which standards or specifications are prescribed, in the official compendium;

Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;

Articles other than food intended to affect the structure of any function of the human body; or

Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

“Emerging scientific technology” means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental or dental hygiene school and use of the technology poses material risks.

“Epithelial attachment” means the layer of cells that extends apically from the depth of the gingival (gum) sulcus (crevice) along the tooth, forming an organic attachment.

“Ex-parte communication” means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

“General anesthesia” is a drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. The patient often requires assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

“General supervision” means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains responsible.

“Homebound patient” means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

“Irreversible procedure” means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

“Jurisdiction” means the Board’s power to investigate and rule on complaints that allege grounds for disciplinary action under A.R.S. Title 32, Chapter 11 or this Chapter.

“Licensee” means a dentist, dental hygienist, dental consultant, retired licensee, or person who holds a restricted permit under A.R.S. §§ 32-1237 or 32-1292.

“Local anesthesia” is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic drug.

“Minimal sedation” is a minimally depressed level of consciousness that retains a patient’s ability to independently and continuously maintain an airway and respond appropriately to light tactile stimulation, not limited to reflex withdrawal from a painful stimulus, or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. In accord with this particular definition, the drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

“Moderate sedation” is a drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation, not limited to reflex withdrawal from a painful stimulus. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is maintained. The drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of a drug before the effects of previous dosing can be fully recognized may result in a greater alteration of the state of consciousness than intended by the permit holder.

“Nitrous oxide analgesia” means nitrous oxide (N₂O/O₂) used as an inhalation analgesic.

“Nonsurgical periodontal treatment” means plaque removal, plaque control, supragingival and subgingival scaling, root planing, and the adjunctive use of chemical agents.

“Official compendium” means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

“Oral sedation” is the enteral administration of a drug or nondrug substance or combination inhalation and enterally administered drug or non-drug substance in a dental office or dental clinic to achieve minimal or moderate sedation.

“Parenteral sedation” is a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a pharmacological or non-pharmacological method or a combination of both methods of administration in which the drug bypasses the gastrointestinal tract.

“Patient of record” means a patient who has undergone a complete dental evaluation performed by a licensed dentist.

“Periodontal examination and assessment” means to collect and correlate clinical signs and patient symptoms that point to either the presence of or the potential for periodontal disease.

“Periodontal pocket” means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the epithelial attachment.

“Plaque” means a film-like sticky substance composed of mucoidal secretions containing bacteria and toxic products, dead tissue cells, and debris.

“Polish” means, for the purposes of A.R.S. § 32-1291(B) only, a procedure limited to the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and polishing agent. A licensee or dental assistant shall not represent that this procedure alone constitutes an oral prophylaxis.

“Prescription-only device” means:
Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or
Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend “Rx Only.”

“Prescription-only drug” does not include a controlled substance but does include:
Any drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;
Any drug that is limited by an approved new drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner; Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or
Any drug required by the federal act to bear on its label the legend “RX Only.”

“President’s designee” means the Board’s executive director, an investigator, or a Board member acting on behalf of the Board president.

“Preventative and therapeutic agents” means substances used in relation to dental hygiene procedures that affect the hard or soft oral tissues to aid in preventing or treating oral disease.

“Prophylaxis” means a scaling and polishing procedure performed on patients with healthy tissues to remove coronal plaque, calculus, and stains.

“Public member” means a person who is not a dentist, dental hygienist, dental assistant, denturist, or dental technician.

“Recognized continuing dental education” means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school as defined in A.R.S. § 32-1201(18), recognized dental hygiene school as defined in A.R.S. § 32-1201(17), or recognized denturist school as defined in A.R.S. § 32-1201(19), or sponsored by a national or state dental, dental hygiene, or denturist association, American Dental Association, Continuing Education Recognition Program (ADA CERP) or Academy of General Dentistry, Program

Approval for Continuing Education (AGD PACE) approved provider, dental, dental hygiene, or denturist study club, governmental agency, commercial dental supplier, non-profit organization, accredited hospital, or programs or courses approved by other state, district, or territorial dental licensing boards.

“Restricted permit holder” means a dentist who meets the requirements of A.R.S. § 32-1237 or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.

“Retired” means a dentist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism.

“Root planing” means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.

“Scaling” means use of instruments on the crown and root surfaces of the teeth to remove plaque, calculus, and stains from these surfaces.

“Section 1301 permit” means a permit to administer general anesthesia and deep sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1302 permit” means a permit to administer parenteral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1303 permit” means a permit to administer oral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1304 permit” means a permit to employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Study club” means a group of at least five Arizona licensed dentists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

“Treatment records” means all documentation related directly or indirectly to the dental treatment of a patient.

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-101 renumbered to R4-11-201, new Section R4-11-101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 334 and at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

R4-11-102. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-102 renumbered to R4-11-202 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-103. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-03 renumbered as Section R4-11-103 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-103 renumbered to R4-11-203 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-104. Repealed

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-04 renumbered as Section R4-11-104 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-105. Repealed

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-05 renumbered as Section R4-11-105 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-105 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 2. LICENSURE BY CREDENTIAL

R4-11-201. Clinical Examination; Requirements

A. If an applicant is applying under A.R.S. §§ 32-1240(A) or 32-1292.01(A), the Board shall ensure that the applicant has passed the clinical examination of another state, United States territory, District of Columbia or a regional testing agency. Satisfactory completion of the clinical examination may be demonstrated by one of the following:

1. Certified documentation, sent directly from another state, United States territory, District of Columbia or a regional testing agency, that confirms successful completion of the clinical examination or multiple examinations administered by the state, United States territory, District of Columbia or regional testing agency. The certified documentation shall contain the name of the applicant, date of examination or examinations and proof of a passing score; or
2. Certified documentation sent directly from another state, United States territory or District of Columbia dental board that shows the applicant passed that state's, United States territory's or District of Columbia's clinical examination before that state's, United States territory's or District of Columbia's participation in a regional examination. The certified documentation shall contain the name of applicant, date of examination or examinations and proof of a passing score.

B. An applicant shall meet the licensure requirements in R4-11-301 and R4-11-303.

Historical Note

Former Rule 2a; Amended effective November 20, 1979 (Supp. 79-6). Amended effective November 28, 1980 (Supp. 80-6). Former Section R4-11-11 renumbered as Section R4-11-201 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-201 renumbered to R4-11-301, new Section R4-11-201 renumbered from R4-11-101 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-202. Dental Licensure by Credential; Application

A. A dentist applying under A.R.S. § 32-1240(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dentist applying under A.R.S. § 32-1240(A)(1) shall:

1. Have a current dental license in another state, territory or district of the United States; 2. Submit a written affidavit affirming that the dentist has practiced dentistry for a minimum of 5000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental practice includes experience as a dental educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dentist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental education requirement of the state in which the applicant is currently licensed; and
4. Provide evidence regarding the clinical examination by complying with one of the subsections in R4-11- 201(A)(1).

C. A dentist applying under A.R.S. § 32-1240(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.

D. For any application submitted under A.R.S. § 32-1240(A), the Board may request additional clarifying evidence required under the applicable subsection in R4-11-201(A)(1).

E. An applicant for dental licensure by credential shall pay the fee prescribed in A.R.S. § 32-1240, except the fee is reduced by 50% for applicants who will be employed or working under contract in:

1. Underserved areas, such as declared or eligible Health Professional Shortage Areas (HPSAs); or
2. Other facilities caring for underserved populations as recognized by the Arizona Department of Health Services and approved by the Board.

F. An applicant for dental licensure by credential who works in areas or facilities described in subsection (E) shall:

1. Commit to a three-year, exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

G. A licensee's failure to comply with the requirements in subsection (F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note

Former Rule 2b; Former Section R4-11-12 renumbered as Section R4-11-202 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-202 repealed, new Section R4-11-202 renumbered from R4-11-102 and the heading amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Labeling changes made to reflect current style requirements (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-203. Dental Hygienist Licensure by Credential; Application

A. A dental hygienist applying under A.R.S. § 32-1292.01(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dental hygienist applying under A.R.S. § 32-1292.01(A)(1) shall:

1. Have a current dental hygienist license in another state, territory, or district of the United States;
2. Submit a written affidavit affirming that the applicant has practiced as a dental hygienist for a minimum of 1000 hours during the two years immediately before applying for licensure by credential. For purposes of this subsection, dental hygienist practice includes experience as a dental hygienist educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dental hygienist in a public health setting;

3. Submit a written affidavit affirming that the applicant has complied with the continuing dental hygienist education requirement of the state in which the applicant is currently licensed; and
 4. Provide evidence regarding the clinical examination by complying with one of the subsections in R4-11- 201(A)(1).
- C. A dental hygienist applying under A.R.S. § 32-1292.01(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.
- D. For any application submitted under A.R.S. § 32-1292.01(A), the Board may request additional clarifying evidence as required under the applicable subsection in R4-11-201(A).
- E. An applicant for dental hygienist licensure by credential shall pay the fee prescribed in A.R.S. § 32-1292.01, except the fee is reduced by 50% for applicants who will be employed or working under contract in:
1. Underserved areas such as declared or eligible Health Professional Shortage Areas (HPSAs); or
 2. Other facilities caring for underserved populations, as recognized by the Arizona Department of Health Services and approved by the Board.
- F. An applicant for dental hygienist licensure by credential who works in areas or facilities described in subsection (E) shall:
1. Commit to a three-year exclusive service period,
 2. File a copy of a contract or employment verification statement with the Board, and
 3. As a licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.
- G. A licensee's failure to comply with the requirements in R4-11- 203(F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note

Former Rule 2c; Former Section R4-11-13 repealed, new Section R4-11-13 adopted effective November 20, 1979 (Supp. 79-6). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-13 renumbered as Section R4-11-203 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-203 renumbered to R4-11-302, new Section R4-11-203 renumbered from R4-11-103 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-204. Dental Assistant Radiography Certification by Credential

Eligibility. To be eligible for dental assistant radiography certification by credential, an applicant shall have a current certificate or other form of approval for taking dental radiographs, issued by a professional licensing agency in another state, United States territory or the District of Columbia that required successful completion of a written dental radiography examination.

Historical Note

Former Rule 2d; Former Section R4-11-14 repealed, new Section R4-11-14 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-14 renumbered as Section R4-11-204, repealed, and new Section R4-11-204 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-204 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-205. Application for Dental Assistant Radiography Certification by Credential

A. An applicant for dental assistant radiography certification by credential shall provide to the Board a completed application, on a form furnished by the Board that contains the following information:

1. A sworn statement of the applicant's eligibility, and
2. A letter of endorsement that verifies compliance with R4- 11-204.

B. Based upon review of information provided under subsection (A), the Board or its designee shall request that an applicant for dental assistant radiography certification by credential provide a copy of a certified document that indicates the reason for a name change if the applicant's documentation contains different names.

Historical Note

Former Rule 2e; Former Section R4-11-15 renumbered as Section R4-11-205 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-205 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3).

R4-11-206. Repealed

Historical Note

Former Rule 2f; Amended as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted and amended effective September 7, 1979 (Supp. 79-5). Former Section R4-11-16 renumbered as Section R4-11-206 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-206 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-207. Repealed

Historical Note

Former Rule 2g; Former Section R4-11-17 renumbered as Section R4-11-207, repealed, and new Section R4-11- 207 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-207 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-208. Repealed

Historical Note

Former Section R4-11-20 repealed, new Section R4-11- 20 adopted effective May 12, 1977 (Supp. 77-3). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-20 renumbered as Section R4-11-208 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-208 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-209. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-19 renumbered as R4-11-209 and repealed. Former Section R4-11-21 renumbered as Section R4-11-209 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-209 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-210. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Amended effective June 7, 1978 (Supp. 78-3). Former Section R4-11-22 renumbered as Section R4-11-210 and amended effective July

29, 1981 (Supp. 81-4). Former Section R4-11-210 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-211. Repealed

Historical Note

Adopted effective August 26, 1977 (Supp. 77-4). Former Section R4-11-23 renumbered as Section R4-11-211 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-211 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-212. Repealed

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-24 renumbered as Section R4-11-212 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-212 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-213. Repealed

Historical Note

Adopted as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-25 renumbered as Section R4-11-213, repealed, and new Section R4-11-213 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-213 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-214. Repealed

Historical Note

Former Rule 2h; Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-18 renumbered as Section R4-11-214 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-214 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-215. Repealed

Historical Note

Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-215 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-216. Repealed

Historical Note

Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-216 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 3. EXAMINATION, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES

R4-11-301. Application

A. An applicant for licensure or certification shall provide the following information and documentation:

1. A sworn statement of the applicant's qualifications for the license or certificate on a form provided by the Board;
2. A photograph of the applicant that is no more than 6 months old;

3. An official, sealed transcript sent directly to the Board from either:
 - a. The applicant's dental, dental hygiene, or denturist school, or
 - b. A verified third-party transcript provider.
 4. Except for a dental consultant license applicant, dental and dental hygiene license applicants provide proof of successfully completing a clinical examination by submitting:
 - a. If applying for dental licensure by examination, a copy of the certificate or score card from the Western Regional Examining Board, indicating that the applicant passed the Western Regional Examining Board examination within the five years immediately before the date the application is filed with the Board;
 - b. If applying for dental hygiene licensure by examination, a copy of the certificate or scorecard from the Western Regional Examining Board or an Arizona Board-approved clinical examination administered by a state, United States territory, District of Columbia or regional testing agency. The certificate or scorecard must indicate that the applicant passed the examination within the five years immediately before the date the application is filed with the Board; or
 - c. If applying for licensure by credential, certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board containing the name of the applicant, date of examination or examinations and proof of a passing score;
 5. Except for a dental consultant license applicant as provided in A.R.S. § 32-1234(A)(7), dental and dental hygiene license applicants must have an official score card sent directly from the National Board examination to the Board;
 6. A copy showing the expiration date of the applicant's current cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency that follows the same procedures, standards, and techniques for CPR training and certification as the American Red Cross or American Heart Association;
 7. A license or certification verification from any other jurisdiction in which an applicant is licensed or certified, sent directly from that jurisdiction to the Board. If the license verification cannot be sent directly to the Board from the other jurisdiction, the applicant must submit a written affidavit affirming that the license verification submitted was issued by the other jurisdiction;
 8. If a dental or dental hygiene applicant has been licensed in another jurisdiction for more than six months, a copy of the self-inquiry from the National Practitioner Data Bank that is no more than 30days old;
 9. If a denturist applicant has been certified in another jurisdiction for more than six months, a copy of the self-inquiry from the Health Integrity and Protection Data Bank that is no more than 30 days old;
 10. If the applicant is in the military or employed by the United States government, a letter of endorsement from the applicant's commanding officer or supervisor that confirms the applicant's military service or United States government employment record; and
 11. The jurisprudence examination fee.
- B. The Board may request that an applicant provide:
1. An official copy of the applicant's dental, dental hygiene, or denturist school diploma,
 2. A copy of a certified document that indicates the reason for a name change if the applicant's application contains different names,
 3. Written verification of the applicant's work history, and
 4. A copy of a high school diploma or equivalent certificate.
- C. An applicant shall pass the Arizona jurisprudence examination with a minimum score of 75%.

Historical Note

Former Rule 3A; Former Section R4-11-29 repealed, new Section R4-11-29 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-29 renumbered as Section R4-

11-301 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-301 repealed, new Section R4-11-301 renumbered from R4-11-201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-302. Repealed

Historical Note

Former Rule 3B; Former Section R4-11-30 repealed, new Section R4-11-30 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-30 renumbered as Section R4-11-302 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-302 repealed, new Section R4-11-302 renumbered from R4-11-203 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificates, Drug or Device Dispensing Registrations, Business Entity Registration and Mobile Dental Facility and Portable Dental Unit Permits

A. The Board office shall complete an administrative completeness review within 24 days of the date of receipt of an application for a license, certificate, permit, or registration.

1. Within 14 calendar days of receiving an initial or renewal application for a dental license, restricted permit, dental hygiene license, dental consultant license, denturist certificate, drug dispensing registration, business entity registration, mobile dental facility or portable dental unit permit, the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.

2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.

3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license, certificate, permit, or registration shall apply again as required in R4-11-301.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of A.A.C. Title 4, Chapter 11, Article 3.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 90 calendar days from the date on which the administrative completeness review of an application package is complete.

1. If the Board finds an applicant to be eligible for a license, certificate, permit, or registration and grants the license, certificate, permit, or registration, the Board office shall notify the applicant in writing.

2. If the Board finds an applicant to be ineligible for a license, certificate, permit, or registration, the Board office shall issue a written notice of denial to the applicant that includes:

- a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
 - b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
 - c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
 - d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office may issue a comprehensive written request to the applicant for additional documentation. An additional supplemental written request for information may be issued upon mutual agreement between the Board or Board office and the applicant.
4. The 90-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation before the next regularly scheduled Board meeting.
5. If the applicant and the Board office mutually agree in writing, the 90-day substantive review time-frame may be extended once for no more than 28 days.
- F. The following time-frames apply for an initial or renewal application governed by this Section:
- 1. Administrative completeness review time-frame: 24 calendar days.
 - 2. Substantive review time-frame: 90 calendar days.
 - 3. Overall time-frame: 114 calendar days.
- G. An applicant whose license is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Former Rule 3C; Former Section R4-11-31 renumbered as Section R4-11-303 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-303 repealed, new Section R4-11-303 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-304. Application Processing Procedures: Issuance and Denial of Dental Assistant Certificates Radiography Certification by Credential

- A. Within 14 calendar days of receiving an application from an applicant for a dental assistant radiography certification by credential, the Board or its designee shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.
- B. An applicant with an incomplete application package shall supply the missing information within 60 calendar days from the date of the notice. If the applicant fails to do so, an applicant shall begin the application process anew.
- C. Upon receipt of all missing information, within 10 calendar days, the Board or its designee shall notify the applicant, in writing, that the application is complete.
- D. The Board or its designee shall not process an application until the applicant has fully complied with the requirements of this Article.
- E. The Board or its designee shall notify an applicant, in writing, whether the certificate is granted or denied, no later than 90 calendar days after the date of the notice advising the applicant that the package is complete.
- F. The notice of denial shall inform the applicant of the following:
 - 1. The reason for the denial, with a citation to the statute or rule which requires the applicant to pass the examination;

2. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
 3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
 4. The name and telephone number of an agency contact person or a designee who can answer questions regarding the application process.
- G. The following time-frames apply for certificate applications governed by this Section:
1. Administrative completeness review time-frame: 24 calendar days.
 2. Substantive review time-frame: 90 calendar days.
 3. Overall time-frame: 114 calendar days.
- H. An applicant whose certificate is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Former Rule 3D; Former Section R4-11-32 renumbered as Section R4-11-304 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-304 repealed, new Section R4-11-304 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Deep Sedation Permits, Parenteral Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or CRNA

- A. The Board office shall complete an administrative completeness review within 24 days from the date of the receipt of an application for a permit.
1. Within 14 calendar days of receiving an initial or renewal application for a general anesthesia and deep sedation permit, parenteral sedation permit, oral sedation permit or permit to employ a physician anesthesiologist or CRNA the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
 2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
 3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.
- B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.
- C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a permit shall apply again as required in A.A.C. Title 4, Chapter 11, Article 13.
- D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of this Section and A.A.C. Title 4, Chapter 11, Article 13.
- E. The Board shall complete a substantive review of the applicant's qualifications in no more than 120 calendar days from the date on which the administrative completeness review of an application package is complete.
1. If the Board finds an applicant to be eligible for a permit and grants the permit, the Board office shall notify the applicant in writing.

2. If the Board finds an applicant to be ineligible for a permit, the Board office shall issue a written notice of denial to the applicant that includes:
 - a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
 - b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
 - c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
 - d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
 3. If the Board finds deficiencies during the substantive review of an application package, the Board office shall issue a comprehensive written request to the applicant for additional documentation.
 4. The 120-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received.
 5. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 36 days.
- F. The following time-frames apply for an initial or renewal application governed by this Section:
1. Administrative completeness review time-frame: 24 calendar days.
 2. Substantive review time-frame: 120 calendar days.
 3. Overall time-frame: 144 calendar days.

Historical Note

New Section R4-11-305 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

ARTICLE 4. FEES

R4-11-401. Retired or Disabled Licensure Renewal Fee

As expressly authorized under A.R.S. § 32-1207(B)(3)(c), the licensure renewal fee for a retired or disabled dentist or dental hygienist is \$15.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-42 renumbered as Section R4-11-401 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-401 repealed, new Section R4-11-401 renumbered from R4-11-901 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-402. Business Entity Fees

As expressly authorized under A.R.S. § 32-1213, the Board establishes and shall collect the following fees from a Business Entity offering dental services:

1. Initial triennial registration, \$300 per location;
2. Renewal of triennial registration, \$300 per location; and
3. Late triennial registration renewal, \$100 per location in addition to the fee under subsection (2).

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-43 renumbered as Section R4-11-402, repealed, and new Section R4-11-402 adopted effective July 29, 1981 (Supp. 81-4). Amended effective February 16, 1995 (Supp. 95-1). Former Section R4-11-402 renumbered to R4-11-601, new Section R4-11-402 renumbered from R4-11-902 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-403. Licensing Fees

A. As expressly authorized under A.R.S. §§ 32-1236, 32-1287, and 32-1297.06, the Board establishes and shall collect the following licensing fees:

1. Dentist triennial renewal fee: \$510;
2. Dentist prorated initial license fee: \$110;
3. Dental hygienist triennial renewal fee: \$255;
4. Dental hygienist prorated initial license fee: \$55;
5. Denturist triennial renewal fee: \$233; and
6. Denturist prorated initial license fee: \$46.

B. The following license-related fees are established in or expressly authorized by statute. The Board shall collect the fees:

1. Jurisprudence examination fee:
 - a. Dentists: \$300;
 - b. Dental Hygienists: \$100; and
 - c. Denturists: \$250.
2. Licensure by credential fee:
 - a. Dentists: \$2,000; and
 - b. Dental Hygienists: \$1,000.
3. Penalty to reinstate an expired license or certificate: \$100 for a dentist, dental hygienist, or denturist in addition to renewal fee specified under subsection (A).
4. Penalty for a dentist, dental hygienist, or denturist who fails to notify Board of a change of mailing address:
 - a. Failure after 10 days: \$50; and
 - b. Failure after 30 days: \$100.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-44 renumbered as Section R4-11-403 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-403 renumbered to R4-11-602, new Section R4-11-403 renumbered from R4-11-903 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). New Section made by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-404. Repealed

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-45 renumbered as Section R4-11-404 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-404 renumbered from R4-11-904 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1).

R4-11-405. Charges for Board Services

The Board shall charge the following for the services provided:

1. Duplicate license: \$25;
2. Duplicate certificate: \$25;
3. License verification:
 - a. For licensee: \$25; and
 - b. For non-licensee: \$5;
4. Copy of audio recording: \$10;
5. Photocopies (per page): \$.25;
6. Mailing lists:
 - a. Dentists:
 - i. In-state licensees - paper or labels: \$150;
 - ii. All licensees - paper or labels: \$175; and
 - iii. Mailing list in digital format: \$100;
 - b. Dental hygienists:
 - i. In-state licensees - paper or labels: \$150;
 - ii. All licensees - paper or labels: \$175; and
 - iii. Mailing list in digital format: \$100; and
 - c. Denturists: All certificate holders - paper, labels, or digital format: \$5; and
7. Board meeting agendas and minutes (mailed directly to consumer):
 - a. Agendas and minutes: \$75 for 12 months;
 - b. Agendas only: \$25 for 12 months; and
 - c. Minutes only: \$50 for 12 months.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-46 repealed, new Section R4-11-46 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-46 renumbered as Section R4-11-405 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-405 renumbered from R4-11-905 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-406. Anesthesia and Sedation Permit Fees

A. As expressly authorized under A.R.S. § 32-1207, the Board establishes and shall collect the following fees:

1. Section 1301 permit fee: \$300 plus \$25 for each additional location;
2. Section 1302 permit fee: \$300 plus \$25 for each additional location;
3. Section 1303 permit fee: \$300 plus \$25 for each additional location; and
4. Section 1304 permit fee: \$300 plus \$25 for each additional location.

B. Upon successful completion of an initial onsite evaluation and upon receipt of the required permit fee, the Board shall issue a separate Section 1301, 1302, 1303, or 1304 permit to a dentist for each location requested by the dentist. A permit expires on December 31 of every fifth year.

C. Permit renewal fees:

1. Section 1301 permit renewal fee: \$300 plus \$25 for each additional location;
2. Section 1302 permit renewal fee: \$300 plus \$25 for each additional location;
3. Section 1303 permit renewal fee: \$300 plus \$25 for each additional location; and
4. Section 1304 permit renewal fee: \$300 plus \$25 for each additional location.

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-47 renumbered as Section R4-11-406 without change effective July 29, 1981 (Supp. 81-4). Repealed effective

February 16, 1995 (Supp. 95-1). New Section R4-11-406 renumbered from R4-11-906 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section R4-11-406 renumbered from R4-11-407 and amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 4130, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-407. Renumbered

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-48 renumbered as Section R4-11-407 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-407 renumbered from R4-11-909 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section R4-11-407 renumbered to R4-11-406 by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1).

R4-11-408. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-49 renumbered as Section R4-11-408 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1).

R4-11-409. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 5. DENTISTS

R4-11-501. Dentist of Record

- A. A dentist of record shall ensure that each patient record has the treatment records for a patient treated in any dental office, clinic, hospital dental clinic, or charitable organization that offers dental services, and the full name of a dentist who is responsible for all of the patient's treatment.
- B. A dentist of record shall obtain a patient's consent to change the treatment plan before changing the treatment plan that the patient originally agreed to, including any additional costs the patient may incur because of the change.
- C. When a dentist who is a dentist of record decides to leave the practice of dentistry or a particular place of practice in which the dentist is the dentist of record, the dentist shall ensure before leaving the practice that a new dentist of record is entered on each patient record.
- D. A dentist of record is responsible for the care given to a patient while the dentist was the dentist of record even after being replaced as the dentist of record by another dentist.
- E. A dentist of record shall:
 - 1. Remain responsible for the care of a patient during the course of treatment; and
 - 2. Be available to the patient through the dentist's office, an emergency number, an answering service, or a substituting dentist.
- F. A dentist's failure to comply with subsection (E) constitutes patient abandonment, and the Board may impose discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-62 renumbered as Section R4-11-501 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-501 repealed, new Section R4-11-501 renumbered from R4-11-1102 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-502. Affiliated Practice

- A. A dentist in a private for profit setting shall not enter into more than 15 affiliated practice relationships under A.R.S. § 32- 1289 at one time.
- B. There is no limit to the number of affiliated practice relationships a dentist may enter into when working in a government, public health, or non-profit organization under Section 501(C)(3) of the Internal Revenue Code.
- C. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.
- D. The affiliated practice agreement shall include a provision for a substitute dentist in addition to the requirements of A.R.S. § 32-1289(F), to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, or consultation with the affiliated practice dental hygienist.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-63 renumbered as Section R4-11-502 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-502 renumbered to R4-11-701 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

R4-11-503. Repealed

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-64 repealed, new Section R4-11-64 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-64 renumbered as Section R4-11-503 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-503 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-504. Renumbered

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-65 repealed, new Section R4-11-65 adopted effective May 23, 1976 (Supp. 76-2). Former Section R4-11-65 renumbered as Section R4-11-504, repealed, and new Section R4-11-504 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-504 renumbered to R4-11-702 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-505. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-66 renumbered as Section R4-11-505 and repealed effective July 29, 1981 (Supp. 81-4).

R4-11-506. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-67 renumbered as Section R4-11-506 and repealed effective July 29, 1981 (Supp. 81-4).

ARTICLE 6. DENTAL HYGIENISTS

R4-11-601. Duties and Qualifications

- A. A dental hygienist may apply preventative and therapeutic agents under the general supervision of a licensed dentist.

B. A dental hygienist may perform a procedure not specifically authorized by A.R.S. § 32-1281 when all of the following conditions are satisfied:

1. The procedure is recommended or prescribed by the supervising dentist;
2. The hygienist has received instruction, training, or education to perform the procedure in a safe manner; and
3. The procedure is performed under the general supervision of a licensed dentist.

C. The Board shall ensure that a dental hygienist is qualified to administer local anesthesia and nitrous oxide analgesia as authorized by A.R.S. § 32-1281(F)(1) and (2), by requiring evidence that the hygienist has completed courses in techniques taught at a recognized dental hygiene school or recognized dental school, as defined in A.R.S. § 32-1201(16) and (17), that consist of a minimum of 36 clock hours of instruction, and has passed examinations in theoretical knowledge and clinical competency in the following subject areas:

1. Review of head and neck anatomy;
2. Pharmacology of anesthetic and analgesic agents;
3. Medical - dental history considerations;
4. Emergency procedures;
5. Selection of appropriate armamentarium and agents;
6. Nitrous oxide administration;
7. Clinical practice, under direct supervision, as defined in A.R.S. § 32-1281(H)(1), including at least three experiences administering each of the following:
 - a. Posterior superior alveolar injection,
 - b. Middle superior alveolar injection,
 - c. Anterior superior alveolar injection,
 - d. Nasopalatine injection,
 - e. Greater - palatine injection,
 - f. Inferior alveolar nerve injection,
 - g. Lingual injection,
 - h. Mental injection,
 - i. Long buccal injections, and
 - j. Nitrous oxide analgesia.

D. In addition to the recognized course of study described in subsection (C), the hygienist shall successfully complete the examination in local anesthesia given by the Western Regional Examining Board. The hygienist shall submit proof of the successful completion of the local anesthesia examination to the Board. The Board shall then issue a Local Anesthesia Certificate.

E. For purposes of qualification of a dental hygienist to place interrupted sutures as authorized by A.R.S. § 32-1281(F)(3), the Board recognizes courses in advanced periodontal therapy offered by a recognized dental hygiene school or a recognized dental school, as defined in A.R.S. § 32-1201(16) and (17), that consist of a minimum of 200 clock hours of instruction and require a dental hygienist's successful completion of those examinations of a theoretical knowledge and clinical competency in the following subject areas:

1. A review of oral histology,
2. Inflammation and pathogenesis of a periodontal pocket,
3. Patient assessment,
4. Dental hygiene treatment planning,
5. Advanced root planing and debridement,
6. Subgingival curettage,
7. Suturing,
8. Wound repair and new attachment, and
9. Clinical experience in each of the following:
 - a. Root planing,
 - b. Subgingival curettage, and
 - c. Suturing.

F. The hygienist shall submit proof of the successful completion of a recognized course in advanced periodontal therapy, as described in subsection (E), to the Board. The Board shall then issue a certification sticker for Suture Placement, which shall be affixed to the hygienist's license.

G. A dental hygienist shall not perform an irreversible procedure.

H. To qualify to use emerging scientific technology as authorized by A.R.S. § 32-1281(D)(2), a dental hygienist shall successfully complete a course of study that meets the following criteria:

1. Is a course offered by a recognized dental school as defined in A.R.S. § 32-1201(17), a recognized dental hygiene school as defined in A.R.S. § 32-1201(16), or sponsored by a national or state dental or dental hygiene association or government agency;
2. Includes didactic instruction with a written examination;
3. Includes hands-on clinical instruction; and
4. Is technology that is scientifically based and supported by studies published in peer reviewed dental journals.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-82 renumbered as Section R4-11-601 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-601 repealed, new Section R4-11-601 renumbered from R4-11-402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

R4-11-602. Care of Homebound Patients

Dental hygienists treating homebound patients shall provide only treatment prescribed by the dentist of record in the diagnosis and treatment plan. The diagnosis and treatment plan shall be based on examination data obtained not more than 12 months before the treatment is administered.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-83 renumbered as Section R4-11-602 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-602 renumbered to R4-11-1001, new Section R4-11-602 renumbered from R4-11-403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-603. Limitation on Number Supervised

A dentist shall not supervise more than three dental hygienists at a time.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-84 renumbered as Section R4-11-603 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-603 renumbered to R4-11-1002, new Section R4-11-603 renumbered from R4-11-408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-604. Selection Committee and Process

A. The Board shall appoint a selection committee to screen candidates for the dental hygiene committee. The selection committee consists of three members. The Board shall appoint at least two members who are dental hygienists and one member who is a current Board member. The Board shall fill any vacancy for the unexpired portion of the term.

B. Each selection committee member's term is one year.

C. By majority vote, the selection committee shall nominate each candidate for the dental hygiene committee and transmit a list of names to the Board for approval, including at least one alternate.

Historical Note

New Section R4-11-604 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-605. Dental Hygiene Committee

- A. The Board shall appoint seven members to the dental hygiene committee as follows:
1. One dentist appointed at the annual December Board meeting, currently serving as a Board member, for a one year term;
 2. One dental hygienist appointed at the annual December Board meeting, currently serving as a Board member and possessing the qualifications required in Article 6, for a one-year term;
 3. Four dental hygienists that possess the qualifications required in Article 6; and
 4. One lay person.
- B. Except for members appointed as prescribed in subsections (A)(1) and (2), the Board shall appoint dental hygiene committee members for staggered terms of three years, beginning January 1, 1999, and limit each member to two consecutive terms. The Board shall fill any vacancy for the unexpired portion of the term.
- C. The dental hygiene committee shall annually elect a chairperson at the first meeting convened during the calendar year.

Historical Note

New Section R4-11-605 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-606. Candidate Qualifications and Submissions

- A. A dental hygienist who seeks membership on the dental hygiene committee shall possess a license in good standing, issued by the Board.
- B. A dental hygienist who is not a Board member and qualifies under subsection (A) shall submit a letter of intent and resume to the Board.
- C. The selection committee shall consider all of the following criteria when nominating a candidate for the dental hygiene committee:
1. Geographic representation,
 2. Experience in postsecondary curriculum analysis and course development,
 3. Public health experience, and
 4. Dental hygiene clinical experience.

Historical Note

New Section R4-11-606 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-607. Duties of the Dental Hygiene Committee

- A. The committee shall advise the Board on all matters relating to the regulation of dental hygienists.
- B. In performing the duty in subsection (A), the committee may:
1. Act as a liaison for the Board, promoting communication and providing a forum for discussion of dental hygiene regulatory issues;
 2. Review applications, syllabi, and related materials and make recommendations to the Board regarding certification of courses in local anesthesia, nitrous oxide analgesia, and suture placement under Article 6 and other procedures which may require certification under Article 6;
 3. Review documentation submitted by dental hygienists to determine compliance with the continuing education requirement for license renewal under Article 12 and make recommendations to the Board regarding compliance;
 4. Make recommendations to the Board concerning statute and rule development which affect dental hygienists' education, licensure, regulation, or practice;
 5. Provide advice to the Board on standards and scope of practice which affect dental hygiene practice;
 6. Provide ad hoc committees to the Board upon request;

7. Request that the Board consider recommendations of the committee at the next regularly scheduled Board meeting; and
 8. Make recommendations to the Board for approval of dental hygiene consultants.
- C. Committee members who are licensed dentists or dental hygienists may serve as Western Regional Examining Board (WREB) examiners or Board consultants.
- D. The committee shall meet at least two times per calendar year. The chairperson or the president of the Board, or their respective designees, may call a meeting of the committee.
- E. The Board may assign additional duties to the committee.

Historical Note

New Section R4-11-607 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-608. Dental Hygiene Consultants

After submission of a current curriculum vitae or resume and approval by the Board, dental hygiene consultants may:

1. Act as Western Regional Examining Board (WREB) examiners for the clinical portion of the dental hygiene examination;
2. Act as Western Regional Examining Board (WREB) examiners for the local anesthesia portion of the dental hygiene examination;
3. Participate in Board-related procedures, including clinical evaluations, investigation of complaints concerning infection control, insurance fraud, or the practice of supervised personnel, and any other procedures not directly related to evaluating a dentist's quality of care; and
4. Participate in onsite office evaluations for infection control, as part of a team.

Historical Note

New Section R4-11-608 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-609. Affiliated Practice

A. To perform dental hygiene services under an affiliated practice relationship pursuant to A.R.S. § 32-1289, a dental hygienist shall:

1. Provide evidence to the Board of successfully completing a total of 12 hours of recognized continuing dental education that consists of the following subject areas:
 - a. A minimum of four hours in medical emergencies; and
 - b. A minimum of eight hours in at least two of the following areas:
 - i. Pediatric or other special health care needs,
 - ii. Preventative dentistry, or
 - iii. Public health community-based dentistry, and
2. Hold a current certificate in basic cardiopulmonary resuscitation (CPR).

B. A dental hygienist shall complete the required continuing dental education before entering an affiliated practice relationship. The dental hygienist shall complete the continuing dental education in subsection (A) before renewing the dental hygienist's license. The dental hygienist may take the continuing dental education online but shall not exceed the allowable hours indicated in R4-11-1209(B)(1).

C. To comply with A.R.S. § 32-1289(E) and (F) and this Section, a dental hygienist shall submit a completed affidavit on a form supplied by the Board office. Board staff shall review the affidavit to determine compliance with all requirements.

D. A dental hygienist who practices or applies to practice under an affiliated practice relationship shall ensure that all signatures in an affiliated practice agreement, amendment, notification, and affidavit are notarized.

E. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

F. The affiliated practice agreement shall include a provision for a substitute dentist, to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, and consultation with the affiliated practice dental hygienist.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

ARTICLE 7. DENTAL ASSISTANTS

R4-11-701. Procedures and Functions Performed by a Dental Assistant under Supervision

A. A dental assistant may perform the following procedures and functions under the direct supervision of a licensed dentist:

1. Place dental material into a patient's mouth in response to a licensed dentist's instruction;
2. Cleanse the supragingival surface of the tooth in preparation for:
 - a. The placement of bands, crowns, and restorations;
 - b. Dental dam application;
 - c. Acid etch procedures; and
 - d. Removal of dressings and packs;
3. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments;
4. Remove temporary cement, interim restorations, and periodontal dressings with hand instruments;
5. Remove sutures;
6. Place and remove dental dams and matrix bands;
7. Fabricate and place interim restorations with temporary cement;
8. Apply sealants;
9. Apply topical fluorides;
10. Prepare a patient for nitrous oxide and oxygen analgesia administration upon the direct instruction and presence of a dentist; or
11. Observe a patient during nitrous oxide and oxygen analgesia as instructed by the dentist.

B. A dental assistant may perform the following procedures and functions under the general supervision of a licensed dentist:

1. Train or instruct patients in oral hygiene techniques, preventive procedures, dietary counseling for caries and plaque control, and provide pre-and post-operative instructions relative to specific office treatment;
2. Collect and record information pertaining to extraoral conditions; and
3. Collect and record information pertaining to existing intraoral conditions.

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-100 renumbered as Section R4-11-701 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-701 renumbered to R4-11-1701, new Section R4-11-701 renumbered from R4-11-502 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-702. Limitations on Procedures or Functions Performed by a Dental Assistant under Supervision

A dental assistant shall not perform the following procedures or functions:

1. A procedure which by law only licensed dentists, licensed dental hygienists, or certified denturists can perform;
2. Intraoral carvings of dental restorations or prostheses;
3. Final jaw registrations;

4. Taking final impressions for any activating orthodontic appliance, fixed or removable prosthesis;
5. Activating orthodontic appliances; or
6. An irreversible procedure.

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-101 renumbered as Section R4-11-702 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-702 repealed, new Section R4-11-702 renumbered from R4-11-504 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-703. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-102 renumbered as Section R4-11-703 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-703 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-704. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-103 renumbered as Section R4-11-704 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-704 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-705. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-104 renumbered as Section R4-11-705 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-705 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-706. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-105 renumbered as Section R4-11-706 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-706 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-707. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-106 renumbered as Section R4-11-707 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-707 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-708. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-107 renumbered as Section R4-11-708 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-708 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-709. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-108 renumbered as Section R4-11-709 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-709 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-710. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-109 renumbered as Section R4-11-710 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-710 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 8. DENTURISTS

R4-11-801. Expired

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-120 renumbered as Section R4-11-801 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-801 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-801 repealed, new Section R4-11-801 renumbered from R4-11-1201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-802. Expired

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-121 renumbered as Section R4-11-802 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-802 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-802 renumbered to R4-11-1301, new Section R4-11-802 renumbered from R4-11-1202 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-803. Renumbered

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-122 renumbered as Section R4-11-803 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-803 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-803 renumbered to R4-11-1302 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-804. Renumbered

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-123 renumbered as Section R4-11-804 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-804 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Former Section R4-11-804 renumbered to R4-11-1303 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-805. Renumbered

Historical Note

Adopted as filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-805 renumbered to R4-11-1304 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-806. Renumbered

Historical Note

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-806 renumbered to R4-11-1305 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 9. RESTRICTED PERMITS

R4-11-901. Application for Restricted Permit

A. An applicant for a restricted permit shall provide the following information and documentation on a form provided by the Board:

1. A sworn statement of the applicant's qualifications for a restricted permit;
2. A photograph of the applicant that is no more than six months old;
3. A letter of endorsement from any other jurisdiction in which an applicant is licensed, sent directly from that jurisdiction to the Board;
4. A letter of endorsement from the applicant's commanding officer or superior if the applicant is in the military or employed by the United States government;
5. A copy of the applicant's current cardiopulmonary resuscitation certification that meets the requirements of R4- 11-301(A)(6); and
6. A copy of the applicant's pending contract with a charitable dental clinic or organization offering dental or dental hygiene services.

B. The Board may request that an applicant provide a copy of a certified document that indicates the reason for a name change if the applicant's application contains different names.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-130 renumbered as Section R4-11- 901, repealed, and new Section R4-11-901 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-901 renumbered to R4-11-401, new Section R4-11-901 renumbered from R4-11-1001 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-902. Issuance of a Restricted Permit

Before issuing a restricted permit under A.R.S. §§ 32-1237 through 32-1239 or 32-1292, the Board shall investigate the statutory qualifications of the charitable dental clinic or organization. The Board shall not recognize a dental clinic or organization under A.R.S. §§ 32-1237 through 32-1239 or 32-1292 as a charitable dental clinic or organization permitted to employ dentists or dental hygienists not licensed in Arizona who hold restricted permits unless the Board makes the following findings of fact:

1. That the entity is a dental clinic or organization offering professional dental or dental hygiene services in a manner consistent with the public health;
2. That the dental clinic or organization offering dental or dental hygiene services is operated for charitable purposes only, offering dental or dental hygiene services either without compensation to the clinic or organization or with compensation at the minimum rate to provide only reimbursement for dental supplies and overhead costs;
3. That the persons performing dental or dental hygiene services for the dental clinic or organization do so without compensation; and

4. That the charitable dental clinic or organization operates in accordance with applicable provisions of law.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-131 renumbered as Section R4-11- 902, repealed, and new Section R4-11-902 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-902 renumbered to R4-11-402, new Section R4-11-902 renumbered from R4-11-1002 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-903. Recognition of a Charitable Dental Clinic Organization

In order for the Board to make the findings required in R4-11-902, the charitable clinic or organization shall provide information to the Board, such as employment contracts with restricted permit holders, Articles and Bylaws, and financial records.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-132 renumbered as Section R4-11- 903, repealed, and new Section R4-11-903 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11- 903 renumbered to R4-11-403, new Section R4-11-903 renumbered from R4-11-1003 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-904. Determination of Minimum Rate

In determining whether professional services are provided at the minimum rate to provide reimbursement for dental supplies and overhead costs under A.R.S. §§ 32-1237(1) or 32-1292(A)(1), the Board shall obtain and review information relating to the actual cost of dental supplies to the dental clinic or organization, the actual overhead costs of the dental clinic or organization, the amount of charges for the dental or dental hygiene services offered, and any other information relevant to its inquiry.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-133 renumbered as Section R4-11- 904 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-904 renumbered to R4-11-404, new Section R4-11-904 renumbered from R4-11-1004 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-905. Expired

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-134 renumbered as Section R4-11- 905 without change effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Former Section R4-11-905 renumbered to R4-11-405, new Section R4-11-905 renumbered from R4-11-1005 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17- 3).

R4-11-906. Expired

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-4). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-906 renumbered to R4-11-406, new Section R4-11-906 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-907. Repealed

Historical Note

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-907 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-908. Repealed

Historical Note

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-908 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-909. Renumbered

Historical Note

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-909 renumbered to R4-11-407 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 10. DENTAL TECHNICIANS

R4-11-1001. Expired

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-140 renumbered as Section R4-11-1001 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1001 renumbered to R4-11-901, new Section R4-11-1001 renumbered from R4-11-602 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-1002. Expired

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-141 renumbered as Section R4-11-1002 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1002 renumbered to R4-11-902, new Section R4-11-1002 renumbered from R4-11-603 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-1003. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-142 renumbered as Section R4-11-1003 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1003 renumbered to R4-11-903 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1004. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-143 renumbered as Section R4-11-1004 without change effective July 29, 1981 (Supp. 81-4). Former

Section R4-11-1004 renumbered to R4-11-904 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1005. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-144 renumbered as Section R4-11- 1005 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1005 renumbered to R4-11-905 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1006. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 11. ADVERTISING

R4-11-1101. Advertising

A dentist may advertise specific dental services or certification in a non-specialty area only if the advertisement includes the phrase "Services provided by an Arizona licensed general dentist." A dental hygienist may advertise specific dental hygiene services only if the advertisement includes the phrase "Services provided by an Arizona licensed dental hygienist." A denturist may advertise specific denture services only if the advertisement includes the phrase "Services provided by an Arizona certified denturist."

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Amended by repealing the former guideline on "Management of Craniomandibular Disorders" and adopting a new guideline effective June 16, 1982 (Supp. 82-3). Repealed effective November 20, 1992 (Supp. 92-4). Former Section R4-11-1101 repealed, new Section R4-11-1101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05- 1).

R4-11-1102. Advertising as a Recognized Specialist

A. A dentist may advertise as a specialist or use the terms "specialty" or "specialist" to describe professional services only if the dentist limits the dentist's practice exclusively to one or more specialty area that are:

1. Recognized by a board that certifies specialists for the area of specialty; and
2. Accredited by the Commission on Dental Accreditation of the American Dental Association.

B. The following specialty areas meet the requirements of subsection (A):

1. Endodontics,
2. Oral and maxillofacial surgery,
3. Orthodontics and dentofacial orthopedics,
4. Pediatric dentistry,
5. Periodontics,
6. Prosthodontics,
7. Dental Public Health,
8. Oral and Maxillofacial Pathology, and
9. Oral and Maxillofacial Radiology.

C. For purposes of this Article, a dentist who wishes to advertise as a specialist or a multiple-specialist in a recognized field under subsection (B) shall meet the criteria in one or more of the following categories:

1. Grandfathered: A dentist who declared a specialty area before December 31, 1964, according to requirements established by the American Dental Association, and has a practice limited to a dentistry area approved by the American Dental Association;
2. Educationally qualified: A dentist who has successfully completed an educational program of two or more years in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the Council on Dental Education of the American Dental Association;
3. Board eligible: A dentist who has met the guidelines of a specialty board that operates in accordance with the requirements established by the American Dental Association in a specialty area recognized by the Board, if the specialty board:
 - a. Has established examination requirements and standards,
 - b. Appraised an applicant's qualifications,
 - c. Administered comprehensive examinations, and
 - d. Upon completion issues a certificate to a dentist who has achieved diplomate status; or
4. Board certified: A dentist who has met the requirements of a specialty board referenced in subsection (C)(3), and who has received a certificate from the specialty board, indicating the dentist has achieved diplomate status.

D. A dentist, dental hygienist, or denturist whose advertising implies that services rendered in a dental office are of a specialty area other than those listed in subsection (B) and recognized by a specialty board that has been accredited by the Commission on Dental Accreditation of the American Dental Association violates this Article and A.R.S. § 32-1201(18)(u), and is subject to discipline under A.R.S. Title 32, Chapter 11.

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1102 renumbered to R4-11-501 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1103. Reserved

R4-11-1104. Repealed

Historical Note

Adopted effective November 25, 1985 (Supp. 85-6). Former Section R4-11-1104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1105. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

R4-11-1201. Continuing Dental Education

A. A licensee or certificate holder shall:

1. Satisfy a continuing dental education requirement that is designed to provide an understanding of current developments, skills, procedures, or treatment related to the licensee's or certificate holder's practice; and
2. Complete the recognized continuing dental education required by this Article each renewal period.

B. A licensee or certificate holder receiving an initial license or certificate shall complete the prescribed credit hours of recognized continuing dental education by the end of the first full renewal period.

Historical Note

Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1201 renumbered to R4-11-801, new Section R4-11-1201 renumbered from R4-11-1402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1202. Continuing Dental Education Compliance and Renewal Requirements

- A. When applying for a renewal license, certificate, or restricted permit, a licensee, certificate holder, or restricted permit holder shall complete a renewal application provided by the Board.
- B. Before receiving a renewal license or certificate, each licensee or certificate holder shall possess a current form of one of the following:
1. A current cardiopulmonary resuscitation (CPR) healthcare provider certificate from the American Red Cross, the American Heart Association, or another certifying agency;
 2. Advanced cardiac life support (ACLS) course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application; or
 3. Pediatric advanced life support (PALS) course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application.
- C. A licensee or certificate holder shall include an affidavit affirming the licensee's or certificate holder's completion of the prescribed credit hours of recognized continuing dental education with a renewal application. A licensee or certificate holder shall include on the affidavit the licensee's or certificate holder's name, license or certificate number, the number of hours completed in each category, and the total number of hours completed for activities defined in R4-11-1209(A)(4).
- D. A licensee or certificate holder shall submit a written request for an extension before the renewal deadline prescribed in A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06. If a licensee or certificate holder fails to meet the credit hour requirement because of military service, dental or religious missionary activity, residence in a foreign country, or other extenuating circumstances as determined by the Board, the Board, upon written request, may grant an extension of time to complete the recognized continuing dental education credit hour requirement.
- E. The Board shall:
1. Only accept recognized continuing dental education credits accrued during the prescribed period immediately before license or certificate renewal, and
 2. Not allow recognized continuing dental education credit accrued in a renewal period in excess of the amount required in this Article to be carried forward to the next renewal period.
- F. A licensee or certificate holder shall maintain documentation of attendance for each program for which credit is claimed that verifies the recognized continuing dental education credit hours the licensee or certificate holder participated in during the most recently completed renewal period.
- G. Each year, the Board shall audit continuing dental education requirement compliance on a random basis or when information is obtained which indicates a licensee or certificate holder may not be in compliance with this Article. A licensee or certificate holder selected for audit shall provide the Board with documentation of attendance that shows compliance with the continuing dental education requirements within 60 days from the date the licensee or certificate holder received notice of the audit by certified mail.
- H. If a licensee or certificate holder is found to not be in compliance with the continuing dental education requirements, the Board may take any disciplinary or non-disciplinary action authorized by A.R.S. Title 32, Chapter 11.

Historical Note

Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1202 renumbered to R4-11-802, new Section R4-11-1202 renumbered from R4-11-1403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by

final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 21 A.A.R. 921, effective August 3, 2015 (Supp. 15-2).

R4-11-1203. Dentists and Dental Consultants

Dentists and dental consultants shall complete 72 hours of recognized continuing dental education in each renewal period as follows:

1. At least 42 credit hours in any of the following areas: Dental and medical health, preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, managing medical emergencies, pain management, dental public health, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, and behavioral and biological sciences that are oriented to dentistry. A licensee who holds a permit to administer general anesthesia, deep sedation, parenteral sedation, or oral sedation who is required to obtain continuing education pursuant to Article 13 may apply those credit hours to the requirements of this Section;
2. No more than 18 credit hours in the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
3. At least three credit hours in chemical dependency, which may include tobacco cessation;
4. At least three credit hours in infectious diseases or infectious disease control;
5. At least three credit hours in CPR healthcare provider, ACLS and PALS. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three credit hours in ethics or Arizona dental jurisprudence.

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3). New Section R4-11-1203 renumbered from R4-11-1404 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

R4-11-1204. Dental Hygienists

A. A dental hygienist shall complete 54 credit hours of recognized continuing dental education in each renewal period as follows:

1. At least 31 credit hours in any of the following areas: Dental and medical health, and dental hygiene services, periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, managing medical emergencies, pain management, dental recordkeeping, dental public health, and new concepts in dental hygiene;
2. No more than 14 credit hours in one or more of the following areas: Dental hygiene practice organization and management, patient management skills, and methods of health care delivery;
3. At least three credit hours in one or more of the following areas: chemical dependency, tobacco cessation, ethics, risk management, or Arizona dental jurisprudence;
4. At least three credit hours in infectious diseases or infectious disease control; and
5. At least three credit hours in CPR healthcare provider, ACLS and PALS. Coursework may be completed online if the course requires a physical demonstration of skills.

B. A licensee who performs dental hygiene services under an affiliated practice relationship who is required to obtain continuing education under R4-11-609 may apply those credit hours to the requirements of this Section.

Historical Note

New Section R4-11-1204 renumbered from R4-11-1405 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

R4-11-1205. Denturists

Denturists shall complete 36 credit hours of recognized continuing dental education in each renewal period as follows:

1. At least 21 credit hours in any of the following areas: Medical and dental health, laboratory procedures, clinical procedures, dental recordkeeping, removable prosthetics, pain management, dental public health, and new technology in dentistry;
2. No more than six credit hours in one or more of the following areas: Denturist practice organization and management, patient management skills, and methods of health care delivery;
3. At least one credit hour in chemical dependency, which may include tobacco cessation;
4. At least two credit hours in infectious diseases or infectious disease control;
5. At least three credit hours in CPR healthcare provider, ACLS and PALS. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three credit hours in ethics or Arizona dental jurisprudence.

Historical Note

New Section R4-11-1205 renumbered from R4-11-1406 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

R4-11-1206. Restricted Permit Holders - Dental

In addition to the requirements in R4-11-1202, a dental restricted permit holder shall comply with the following requirements:

1. When applying for renewal under A.R.S. § 32-1238, the restricted permit holder shall provide information to the Board that the restricted permit holder has completed 24 credit hours of recognized continuing dental education yearly.
2. To determine whether to grant the renewal, the Board shall only consider recognized continuing dental education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1236.
3. A dental restricted permit holder shall complete the 24 hours of recognized continuing dental education before renewal as follows:
 - a. At least 12 credit hours in one or more of the subjects enumerated in R4-11-1203(1);
 - b. No more than six credit hours in one or more of the subjects enumerated in R4-11-1203(2);
 - c. At least one credit hour in the subjects enumerated in R4-11-1203(3);
 - d. At least one credit hour in the subjects enumerated in R4-11-1203(4).
 - e. At least three credit hours in the subjects enumerated in R4-11-1203(5); and
 - f. At least one credit hour in the subjects enumerated in R4-11-1203(6).

Historical Note

New Section R4-11-1206 renumbered from R4-11-1407 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

R4-11-1207. Restricted Permit Holders - Dental Hygiene

In addition to the requirements in R4-11-1202, a dental hygiene restricted permit holder shall comply with the following:

1. When applying for renewal under A.R.S. § 32-1292, the restricted permit holder shall provide information to the Board that the restricted permit holder has completed 18 credit hours of recognized continuing dental education yearly.
2. To determine whether to grant renewal, the Board shall only consider recognized continuing dental education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1287.
3. A dental hygiene restricted permit holder shall complete the 18 hours of recognized continuing dental education before renewal as follows:
 - a. At least 9 credit hours in one or more of the subjects enumerated in R4-11-1204(1);
 - b. No more than three credit hours in one or more of the subjects enumerated in R4-11-1204(2);
 - c. At least one credit hour in the subjects enumerated in R4-11-1204(3);
 - d. At least two credit hours in the subjects enumerated in R4-11-1204(4) and
 - e. At least three credit hours in the subjects enumerated in R4-11-1204(5).

Historical Note

New Section R4-11-1207 renumbered from R4-11-1408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

R4-11-1208. Retired Licensees or Certificate Holders

A retired licensee or certificate holder shall:

1. Except for the number of credit hours required, comply with the requirements in R4-11-1202; and
2. When applying for renewal under A.R.S. § 32-1236 for a dentist, A.R.S. § 32-1287 for a dental hygienist, and A.R.S. § 32-1297.06 for a denturist, provide information to the Board that the retired licensee or certificate holder has completed the following credit hours of recognized continuing dental education per renewal period:
 - a. Dentist - 27 credit hours of which no less than three credit hours shall be for CPR;
 - b. Dental hygienist - 21 credit hours of which no less than three credit hours shall be for CPR; and
 - c. Denturist - 9 credit hours of which no less than three credit hours shall be for CPR.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1209. Types of Courses

A. A licensee or certificate holder shall obtain recognized continuing dental education from one or more of the following activities:

1. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry;
2. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry by means of audio-video technology in which the licensee is provided all seminar, symposium, lecture or program materials and the technology permits attendees to fully participate; or
3. Curricula designed to prepare for specialty board certification as a specialist or recertification examinations or advanced training at an accredited institution as defined in A.R.S. Title 32, Chapter 11; and

4. Subject to the limitations in subsection (B), any of the following activities that provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry:

- a. A correspondence course, video, internet or similar self-study course, if the course includes an examination and the licensee or certificate holder passes the examination;
- b. Participation on the Board, in Board complaint investigations including clinical evaluations or anesthesia and sedation permit evaluations;
- c. Participation in peer review of a national or state dental, dental hygiene, or denturist association or participation in quality of care or utilization review in a hospital, institution, or governmental agency;
- d. Providing dental-related instruction to dental, dental hygiene, or denturist students, or allied health professionals in a recognized dental school, recognized dental hygiene school, or recognized denturist school or providing dental-related instruction sponsored by a national, state, or local dental, dental hygiene, or denturist association;
- e. Publication or presentation of a dental paper, report, or book authored by the licensee or certificate holder that provides information on current developments, skills, procedures, or treatment related to the practice of dentistry. A licensee or certificate holder may claim credit hours:
 - i. Only once for materials presented;
 - ii. Only if the date of publication or original presentation was during the applicable renewal period; and
 - iii. One credit hour for each hour of preparation, writing, and presentation; or
- f. Providing dental, dental hygiene, or denturist services in a Board-recognized charitable dental clinical or organization.

B. The following limitations apply to the total number of credit hours earned per renewal period in any combination of the activities listed in subsection (A)(4):

1. Dentists and Dental Hygienists, no more than 24 hours;
2. Denturists, no more than 12 hours;
3. Retired or Restricted Permit Holder Dentists or Dental Hygienists, no more than nine hours; and
4. Retired Denturists, no more than three hours.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION

R4-11-1301. General Anesthesia and Deep Sedation

A. Before administering general anesthesia, or deep sedation by any means, in a dental office or dental clinic, a dentist shall possess a Section 1301 permit issued by the Board. The dentist may renew a Section 1301 permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1301 permit, a dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3), and R4-11-1307, includes:
 - a. General information about the applicant such as:
 - i. Name;
 - ii. Home and office addresses and telephone numbers;
 - iii. Limitations of practice;
 - iv. Hospital affiliations;
 - v. Denial, curtailment, revocation, or suspension of hospital privileges;

- vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
 - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
 - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
 - 2. On forms provided by the Board, provide a dated and signed affidavit attesting that any office or dental clinic where the dentist will administer general anesthesia or deep sedation:
 - a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and deep sedation:
 - i. Emergency drugs;
 - ii. Electrocardiograph monitor;
 - iii. Pulse oximeter;
 - iv. Cardiac defibrillator or automated external defibrillator (AED);
 - v. Positive pressure oxygen and supplemental oxygen;
 - vi. Suction equipment, including endotracheal, tonsillar, or pharyngeal and emergency backup medical suction device;
 - vii. Laryngoscope, multiple blades, backup batteries, and backup bulbs;
 - viii. Endotracheal tubes and appropriate connectors;
 - ix. Magill forceps;
 - x. Oropharyngeal and nasopharyngeal airways;
 - xi. Auxiliary lighting; xii. Stethoscope; and
 - xiii. Blood pressure monitoring device; and
 - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or deep sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider Level;
 - 3. Hold a valid license to practice dentistry in this state;
 - 4. Maintain a current permit to prescribe and administer controlled substances in this state issued by the United States Drug Enforcement Administration; and
 - 5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
 - a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management.
- C. Initial applicants shall meet one or more of the following conditions:
- 1. Complete, within the three years before submitting the permit application, a full credit load, as defined by the training program, during one calendar year of training, in anesthesiology or related academic subjects, beyond the undergraduate dental school level in a training program described in R4-11-1306(A), offered by a hospital accredited by the Joint Commission on Accreditation of Hospitals Organization, or sponsored by a university accredited by the American Dental Association Commission on Dental Accreditation;
 - 2. Be, within the three years before submitting the permit application, a Diplomate of the American Board of Oral and Maxillofacial Surgeons or eligible for examination by the American Board of Oral and Maxillofacial surgeons, a Fellow of the American Association of Oral and Maxillofacial surgeons, a Fellow of the American Dental Society of Anesthesiology, a Diplomate of the National Dental Board of Anesthesiology, or a Diplomate of the American Dental Board of Anesthesiology; or

3. For an applicant who completed the requirements of subsections (C)(1) or (C)(2) more than three years before submitting the permit application, provide the following documentation:

- a. On a form provided by the Board, a written affidavit affirming that the applicant has administered general anesthesia or deep sedation to a minimum of 25 patients within the year before submitting the permit application or 75 patients within the last five years before submitting the permit application;
- b. A copy of the general anesthesia or deep sedation permit in effect in another state or certification of military training in general anesthesia or deep sedation from the applicant's commanding officer; and
- c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(a) through (f).

D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer general anesthesia or deep sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, a Section 1301 permit shall be issued to the applicant.

1. The onsite evaluation team shall consist of: a. Two dentists who are Board members, or Board designees for initial applications; or b. One dentist who is a Board member or Board designee for renewal applications.

2. The onsite team shall evaluate the following:

- a. The availability of equipment and personnel as specified in subsection (B)(2);
- b. Proper administration of general anesthesia or deep sedation to a patient by the applicant in the presence of the evaluation team;
- c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
- d. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances;
- e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient specified in subsection (D)(2)(b); and
- f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.

3. The evaluation team shall recommend one of the following:

- a. Pass. Successful completion of the onsite evaluation;
- b. Conditional Approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
- c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
- d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
- e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11-1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.

4. The onsite evaluation of an additional dental office or dental clinic in which general anesthesia or deep sedation is administered by an existing Section 1301 permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
 5. A Section 1301 mobile permit may be issued if a Section 1301 permit holder travels to dental offices or dental clinics to provide anesthesia or deep sedation. The applicant must submit a completed affidavit verifying:
 - a. That the equipment and supplies for the provision of anesthesia or deep sedation as required in subsection (B)(2)(a) either travel with the Section 1301 permit holder or are in place and in appropriate condition at the dental office or dental clinic where anesthesia or deep sedation is provided, and
 - b. Compliance with subsection (B)(2)(b).
- E. A Section 1301 permit holder shall keep an anesthesia or deep sedation record for each general anesthesia and deep sedation procedure that includes the following entries:
1. Pre-operative and post-operative electrocardiograph documentation;
 2. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
 3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
 4. A list of all medications given, with dosage and time intervals, and route and site of administration;
 5. Type of catheter or portal with gauge;
 6. Indicate nothing by mouth or time of last intake of food or water;
 7. Consent form; and
 8. Time of discharge and status, including name of escort.
- F. The Section 1301 permit holder, for intravenous access, shall use a new infusion set, including a new infusion line and new bag of fluid, for each patient.
- G. The Section 1301 permit holder shall utilize supplemental oxygen for patients receiving general anesthesia or deep sedation for the duration of the procedure.
- H. The Section 1301 permit holder shall continuously supervise the patient from the initiation of anesthesia or deep sedation until termination of the anesthesia or deep sedation procedure and oxygenation, ventilation, and circulation are stable. The Section 1301 permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.
- I. A Section 1301 permit holder may employ the following health care professionals to provide anesthesia or sedation services and shall ensure that the health care professional continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable:
1. An allopathic or osteopathic physician currently licensed in Arizona by the Arizona Medical Board or the Arizona Board of Osteopathic Examiners who has successfully completed a residency program in anesthesiology approved by the American Council on Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA) or who is certified by either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology and is credentialed with anesthesia privileges through an Arizona licensed medical facility, or
 2. A Certified Registered Nurse Anesthetist (CRNA) currently licensed in Arizona who provides services under the Nurse Practice Act in A.R.S. Title 32, Chapter 15.
- J. A Section 1301 permit holder may also administer parenteral sedation without obtaining a Section 1302 permit.

Historical Note

New Section R4-11-1301 renumbered from R4-11-802 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9

A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1302. Parenteral Sedation

A. Before administering parenteral sedation in a dental office or dental clinic, a dentist shall possess a Section 1302 permit issued by the Board. The dentist may renew a Section 1302 permit every five years by complying with R4-11-1307.

1. A Section 1301 permit holder may also administer parenteral sedation.
2. A Section 1302 permit holder shall not administer or employ any agents which have a narrow margin for maintaining consciousness including, but not limited to, ultrashort acting barbiturates, propofol, parenteral ketamine, or similarly acting drugs, agents, or techniques, or any combination thereof that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of moderate sedation.

B. To obtain or renew a Section 1302 permit, the dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:

a. General information about the applicant such as:

- i. Name;
- ii. Home and office addresses and telephone numbers;
- iii. Limitations of practice;
- iv. Hospital affiliations;
- v. Denial, curtailment, revocation, or suspension of hospital privileges;
- vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
- vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and

b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer parenteral sedation by intravenous or intramuscular route:

a. Contains the following properly operating equipment and supplies during the provision of parenteral sedation by the permit holder or general anesthesia or deep sedation by a physician anesthesiologist or Certified Registered Nurse Anesthetist (CRNA):

- i. Emergency drugs;
- ii. Positive pressure oxygen and supplemental oxygen;
- iii. Stethoscope;
- iv. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
- v. Oropharyngeal and nasopharyngeal airways;
- vi. Pulse oximeter;
- vii. Auxiliary lighting;
- viii. Blood pressure monitoring device; and
- ix. Cardiac defibrillator or automated external defibrillator (AED); and

b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:

- i. Holds a current course completion confirmation in cardiopulmonary resuscitation (CPR) health care provider level;
- ii. Is present during the parenteral sedation procedure; and
- iii. After the procedure, monitors the patient until discharge;

3. Hold a valid license to practice dentistry in this state;

4. Maintain a current permit to prescribe and administer controlled substances in this state issued by the United States Drug Enforcement Administration;
 5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
 - a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management.
- C. Initial applicants shall meet one of the following conditions:
1. Successfully complete Board-recognized undergraduate, graduate, or postgraduate education within the three years before submitting the permit application, that includes the following:
 - a. Sixty (60) didactic hours of basic parenteral sedation to include:
 - i. Physical evaluation;
 - ii. Management of medical emergencies;
 - iii. The importance of and techniques for maintaining proper documentation; and
 - iv. Monitoring and the use of monitoring equipment; and
 - b. Hands-on administration of parenteral sedative medications to at least 20 patients in a manner consistent with this Section; or
 2. An applicant who completed training in parenteral sedation more than three years before submitting the permit application shall provide the following documentation:
 - a. On a form provided by the Board, a written affidavit affirming that the applicant has administered parenteral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;
 - b. A copy of the parenteral sedation permit in effect in another state or certification of military training in parenteral sedation from the applicant's commanding officer; and
 - c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(b) through (f).
- D. After submitting the application and written evidence of compliance with requirements outlined in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer parenteral sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1302 permit to the applicant.
1. The onsite evaluation team shall consist of:
 - a. Two dentists who are Board members, or Board designees for initial applications, or
 - b. One dentist who is a Board member or Board designee for renewal applications.
 2. The onsite team shall evaluate the following:
 - a. The availability of equipment and personnel as specified in subsection (B)(2);
 - b. Proper administration of parenteral sedation to a patient by the applicant in the presence of the evaluation team;
 - c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
 - d. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of all controlled substances;
 - e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient receiving parenteral sedation as specified in subsection (D)(2)(b); and

- f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
3. The evaluation team shall recommend one of the following:
 - a. Pass. Successful completion of the onsite evaluation;
 - b. Conditional Approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
 - c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
 - d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
 - e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11- 1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
 4. The onsite evaluation of an additional dental office or dental clinic in which parenteral sedation is administered by an existing Section 1302 permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
 5. A Section 1302 mobile permit may be issued if a Section 1302 permit holder travels to dental offices or dental clinics to provide parenteral sedation. The applicant must submit a completed affidavit verifying:
 - a. That the equipment and supplies for the provision of parenteral sedation as required in R4-11- 1302(B)(2)(a) either travel with the Section 1302 permit holder or are in place and in appropriate working condition at the dental office or dental clinic where parenteral sedation is provided, and
 - b. Compliance with R4-11-1302(B)(2)(b).
- E. A Section 1302 permit holder shall keep a parenteral sedation record for each parenteral sedation procedure that:
1. Includes the following entries:
 - a. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
 - b. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
 - c. A list of all medications given, with dosage and time intervals and route and site of administration;
 - d. Type of catheter or portal with gauge;
 - e. Indicate nothing by mouth or time of last intake of food or water;
 - f. Consent form; and
 - g. Time of discharge and status, including name of escort; and
 2. May include pre-operative and post-operative electrocardiograph report.
- F. The Section 1302 permit holder shall establish intravenous access on each patient receiving parenteral sedation utilizing a new infusion set, including a new infusion line and new bag of fluid.
- G. The Section 1302 permit holder shall utilize supplemental oxygen for patients receiving parenteral sedation for the duration of the procedure.
- H. The Section 1302 permit holder shall continuously supervise the patient from the initiation of parenteral sedation until termination of the parenteral sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1302 permit holder shall not commence with the

administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1302 permit holder may employ a health care professional as specified in R4-11-1301(I).

Historical Note

New Section R4-11-1302 renumbered from R4-11-803 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1303. Oral Sedation

A. Before administering oral sedation in a dental office or dental clinic, a dentist shall possess a Section 1303 permit issued by the Board. The dentist may renew a Section 1303 permit every five years by complying with R4-11-1307.

1. A Section 1301 permit holder or Section 1302 permit holder may also administer oral sedation without obtaining a Section 1303 permit.

2. The administration of a single drug for minimal sedation does not require a Section 1303 permit if:

a. The administered dose is within the Food and Drug Administration's (FDA) maximum recommended dose as printed in FDA approved labeling for unmonitored home use;

i. Incremental multiple doses of the drug may be administered until the desired effect is reached, but does not exceed the maximum recommended dose; and

ii. During minimal sedation, a single supplemental dose may be administered. The supplemental dose may not exceed one-half of the initial dose and the total aggregate dose may not exceed one and one-half times the FDA maximum recommended dose on the date of treatment; and

b. Nitrous oxide/oxygen may be administered in addition to the oral drug as long as the combination does not exceed minimal sedation.

B. To obtain or renew a Section 1303 permit, a dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:

a. General information about the applicant such as:

i. Name;

ii. Home and office addresses and telephone numbers;

iii. Limitations of practice;

iv. Hospital affiliations;

v. Denial, curtailment, revocation, or suspension of hospital privileges;

vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and

vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and

b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer oral sedation:

a. Contains the following properly operating equipment and supplies during the provision of sedation:

i. Emergency drugs;

ii. Cardiac defibrillator or automated external defibrillator (AED);

iii. Positive pressure oxygen and supplemental oxygen;

iv. Stethoscope;

- v. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
 - vi. Pulse oximeter;
 - vii. Blood pressure monitoring device; and
 - viii. Auxiliary lighting; and
 - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
 - i. Holds a current certificate in cardiopulmonary resuscitation (CPR) Health Care Provider Level;
 - ii. Is present during the oral sedation procedure; and
 - iii. After the procedure, monitors the patient until discharge;
 - 3. Hold a valid license to practice dentistry in this state;
 - 4. Maintain a current permit to prescribe and administer controlled substances in this state issued by the United States Drug Enforcement Administration;
 - 5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
 - a. Cardiopulmonary resuscitation (CPR) Health Care Provider Level from the American Heart Association, American Red Cross, or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
 - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management.
- C. Initial applicants shall meet one of the following:
- 1. Complete a Board-recognized post-doctoral residency program that includes documented training in oral sedation within the last three years before submitting the permit application; or
 - 2. Complete a Board recognized post-doctoral residency program that includes documented training in oral sedation more than three years before submitting the permit application shall provide the following documentation:
 - a. On a form provided by the Board, a written affidavit affirming that the applicant has administered oral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;
 - b. A copy of the oral sedation permit in effect in another state or certification of military training in oral sedation from the applicant's commanding officer; and
 - c. On a form provided by the Board, a written affidavit affirming the completion of 30 hours of continuing education taken within the last five years as outlined in R4-11-1306(C)(1)(a) through (f); or
 - 3. Provide proof of participation in 30 clock hours of Board recognized undergraduate, graduate, or post-graduate education in oral sedation within the three years before submitting the permit application that includes:
 - a. Training in basic oral sedation,
 - b. Pharmacology,
 - c. Physical evaluation,
 - d. Management of medical emergencies,
 - e. The importance of and techniques for maintaining proper documentation, and
 - f. Monitoring and the use of monitoring equipment.
- D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1303 permit to the applicant.
- 1. The onsite evaluation team shall consist of:
 - a. For initial applications, two dentists who are Board members, or Board designees.
 - b. For renewal applications, one dentist who is a Board member, or Board designee.
 - 2. The onsite team shall evaluate the following:

- a. The availability of equipment and personnel as specified in subsection (B)(2);
 - b. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
 - c. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances;
 - d. Proper recordkeeping as specified in subsection (E) by reviewing the forms that document the oral sedation record; and
 - e. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
3. The evaluation team shall recommend one of the following:
- a. Pass. Successful completion of the onsite evaluation;
 - b. Conditional Approval for failing to have appropriate equipment, proper documentation of controlled substance, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before permit will be issued;
 - c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency; or
 - d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency.
4. The onsite evaluation of an additional dental office or dental clinic in which oral sedation is administered by a Section 1303 permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1303 mobile permit may be issued if the Section 1303 permit holder travels to dental offices or dental clinics to provide oral sedation. The applicant must submit a completed affidavit verifying:
- a. That the equipment and supplies for the provision of oral sedation as required in R4-11-1303(B)(2)(a) either travel with the Section 1303 permit holder or are in place and in appropriate condition at the dental office or dental clinic where oral sedation is provided, and
 - b. Compliance with R4-11-1303(B)(2)(b).
- E. A Section 1303 permit holder shall keep an oral sedation record for each oral sedation procedure that:
1. Includes the following entries:
 - a. Pre-operative, intra-operative, and post-operative, pulse oximeter oxygen saturation and pulse rate documentation;
 - b. Pre-operative and post-operative blood pressure;
 - c. Documented reasons for not taking vital signs if a patient's behavior or emotional state prevents monitoring personnel from taking vital signs;
 - d. List of all medications given, including dosage and time intervals;
 - e. Patient's weight;
 - f. Consent form;
 - g. Special notes, such as, nothing by mouth or last intake of food or water; and
 - h. Time of discharge and status, including name of escort; and
 2. May include the following entries:
 - a. Pre-operative and post-operative electrocardiograph report; and
 - b. Intra-operative blood pressures.

- F. The Section 1303 permit holder shall utilize supplemental oxygen for patients receiving oral sedation for the duration of the procedure.
- G. The Section 1303 permit holder shall ensure the continuous supervision of the patient from the administration of oral sedation until oxygenation, ventilation and circulation are stable and the patient is appropriately responsive for discharge from the dental office or dental clinic.
- H. A Section 1303 permit holder may employ a health care professional to provide anesthesia services, if all of the following conditions are met:
1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I);
 2. The Section 1303 permit holder has completed coursework within the two years prior to submitting the permit application in one or more of the following:
 - a. ACLS from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. PALS in a practice treating pediatric patients;
 - c. A recognized continuing education course in advanced airway management;
 3. The Section 1303 permit holder ensures that:
 - a. The dental office or clinic contains the equipment and supplies listed in R4-11-1304(B)(2)(a) during the provision of anesthesia or sedation by the physician anesthesiologist or CRNA;
 - b. The anesthesia or sedation record contains all the entries listed in R4-11-1304(D);
 - c. For intravenous access, the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient; and
 - d. The patient is continuously supervised from the administration of anesthesia or sedation until the termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1303 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

Historical Note

New Section R4-11-1303 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1303 renumbered to R4-11-1304; new Section R4-11- 1303 made by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1304. Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)

A. This Section does not apply to a Section 1301 permit holder or a Section 1302 permit holder practicing under the provisions of R4-11-1302(I) or a Section 1303 permit holder practicing under the provisions of R4-11-1303(H). A dentist may utilize a physician anesthesiologist or certified registered nurse anesthetist (CRNA) for anesthesia or sedation services while the dentist provides treatment in the dentist's office or dental clinic after obtaining a Section 1304 permit issued by the Board.

1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I).
2. The dentist permit holder shall provide all dental treatment and ensure that the physician anesthesiologist or CRNA remains on the dental office or dental clinic premises until any patient receiving anesthesia or sedation services is discharged.
3. A dentist may renew a Section 1304 permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1304 permit, a dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307 includes:

- a. General information about the applicant such as:
 - i. Name;
 - ii. Home and office addresses and telephone numbers;
 - iii. Limitations of practice;
 - iv. Hospital affiliations;
 - v. Denial, curtailment, revocation, or suspension of hospital privileges;
 - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
 - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
 - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist provides treatment during administration of general anesthesia or sedation by a physician anesthesiologist or CRNA:
- a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and sedation:
 - i. Emergency drugs;
 - ii. Electrocardiograph monitor;
 - iii. Pulse oximeter;
 - iv. Cardiac defibrillator or automated external defibrillator (AED);
 - v. Positive pressure oxygen and supplemental continuous flow oxygen;
 - vi. Suction equipment, including endotracheal, tonsillar or pharyngeal and emergency backup medical suction device;
 - vii. Laryngoscope, multiple blades, backup batteries and backup bulbs;
 - viii. Endotracheal tubes and appropriate connectors;
 - ix. Magill forceps;
 - x. Oropharyngeal and nasopharyngeal airways;
 - xi. Auxiliary lighting;
 - xii. Stethoscope; and
 - xiii. Blood pressure monitoring device; and
 - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider level;
3. Hold a valid license to practice dentistry in this state; and
4. Provide confirmation of completing coursework within the last two years prior to submitting the permit application in one or more of the following:
- a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management.
- C. After submitting the application and written evidence of compliance with requirements in subsection (B) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue the applicant a Section 1304 permit.
1. The onsite evaluation team shall consist of one dentist who is a Board member, or Board designee.
 2. The onsite team shall evaluate the following:
 - a. The availability of equipment and personnel as specified in subsection (B)(2);

- b. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances; and
 - c. Proper recordkeeping as specified in subsection (E) by reviewing previous anesthesia or sedation records.
 - 3. The evaluation team shall recommend one of the following:
 - a. Pass. Successful completion of the onsite evaluation; or
 - b. Conditional approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued.
 - 4. The evaluation of an additional dental office or dental clinic in which a Section 1304 permit holder provides treatment during the administration general anesthesia or sedation by a physician anesthesiologist or CRNA may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (B)(2).
- D. A Section 1304 permit holder shall keep an anesthesia or sedation record for each general anesthesia and sedation procedure that includes the following entries:
 - 1. Pre-operative and post-operative electrocardiograph documentation;
 - 2. Pre-operative, intra-operative, and post-operative, pulse oximeter documentation;
 - 3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation; and
 - 4. A list of all medications given, with dosage and time intervals and route and site of administration;
 - 5. Type of catheter or portal with gauge;
 - 6. Indicate nothing by mouth or time of last intake of food or water;
 - 7. Consent form; and
 - 8. Time of discharge and status, including name of escort.
- E. For intravenous access, a Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient.
- F. A Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA utilizes supplemental continuous flow oxygen for patients receiving general anesthesia or sedation for the duration of the procedure.
- G. The Section 1304 permit holder shall continuously supervise the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1304 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

Historical Note

New Section R4-11-1304 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1304 renumbered to R4-11-1305; new Section R4-11- 1304 renumbered from R4-11-1303 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1305. Reports of Adverse Occurrences

If a death, or incident requiring emergency medical response, occurs in a dental office or dental clinic during the administration of or recovery from general anesthesia, deep sedation, moderate sedation, or minimal sedation, the permit holder and the treating dentist involved shall submit a complete report of the incident to the Board within 10 days after the occurrence.

Historical Note

New Section R4-11-1305 renumbered from R4-11-806 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1305 renumbered to R4-11-1306; new Section R4-11- 1305 renumbered from R4-11-1304 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1306. Education; Continued Competency

A. To obtain a Section 1301, permit by satisfying the education requirement of R4-11-1301(B)(6), a dentist shall successfully complete an advanced graduate or post-graduate education program in pain control.

1. The program shall include instruction in the following subject areas:
 - a. Anatomy and physiology of the human body and its response to the various pharmacologic agents used in pain control;
 - b. Physiological and psychological risks for the use of various modalities of pain control;
 - c. Psychological and physiological need for various forms of pain control and the potential response to pain control procedures;
 - d. Techniques of local anesthesia, sedation, and general anesthesia, and psychological management and behavior modification, as they relate to pain control in dentistry; and
 - e. Handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.
2. The program shall consist of didactic and clinical training. The didactic component of the program shall:
 - a. Be the same for all dentists, whether general practitioners or specialists; and
 - b. Include each subject area listed in subsection (A)(1).
3. The program shall provide at least one calendar year of training as prescribed in R4-11-1301(B)(6)(a).

B. To maintain a Section 1301 or 1302 permit under R4-11-1301 or R4-11-1302 a permit holder shall:

1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
 - a. General anesthesia,
 - b. Parenteral sedation,
 - c. Physical evaluation,
 - d. Medical emergencies,
 - e. Monitoring and use of monitoring equipment, or
 - f. Pharmacology of drugs and non-drug substances used in general anesthesia or parenteral sedation; and
2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
 - a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management;
3. Complete at least 10 general anesthesia, deep sedation or parenteral sedation cases a calendar year; and
4. Apply a maximum of six hours from subsection (B)(2) toward the continuing education requirements for subsection (B)(1).

- C. To maintain a Section 1303 permit issued under R4-11-1303, a permit holder shall:
1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
 - a. Oral sedation,
 - b. Physical evaluation,
 - c. Medical emergencies,
 - d. Monitoring and use of monitoring equipment, or
 - e. Pharmacology of oral sedation drugs and non-drug substances; and
 2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
 - a. Cardiopulmonary resuscitation (CPR) Health Care Provider level from the American Heart Association, American Red Cross or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
 - b. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - c. Pediatric advanced life support (PALS);
 - d. A recognized continuing education course in advanced airway management; and
 3. Complete at least 10 oral sedation cases a calendar year.

Historical Note

Section R4-11-1306 renumbered from R4-11-1305 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1307. Renewal of Permit

- A. To renew a Section 1301, 1302, or 1303 permit, the permit holder shall:
1. Provide written documentation of compliance with the applicable continuing education requirements in R4-11-1306;
 2. Provide written documentation of compliance with the continued competency requirements in R4-11-1306;
 3. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1301, R4-11-1302, or R4-11-1303; and
 4. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1301, R4-11-1302, or R4-11-1303.
- B. To renew a Section 1304 permit, the permit holder shall:
1. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1304; and
 2. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1304.
- C. After the permit holder successfully completes the evaluation and submits the required affidavits, the Board shall renew a Section 1301, 1302, 1303, 1304 permit, as applicable.
- D. The Board may stagger due dates for renewal applications.

Historical Note

Made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

ARTICLE 14. DISPENSING DRUGS AND DEVICES

R4-11-1401. Prescribing

A. In addition to the requirements of A.R.S. § 32-1298(C), a dentist shall ensure that a prescription order contains the following information:

1. Date of issuance;
2. Name and address of the patient to whom the prescription is issued;
3. Name, strength, dosage form, and quantity of the drug or name and quantity of the device prescribed;
4. Name and address of the dentist prescribing the drug; and
5. Drug Enforcement Administration registration number of the dentist, if prescribing a controlled substance.

B. Before dispensing a drug or device, a dentist shall present to the patient a written prescription for the drug or device being dispensed that includes on the prescription the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1401 repealed, new Section R4-11-1401 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1402. Labeling and Dispensing

A. A dentist shall include the following information on the label of all drugs and devices dispensed:

1. The dentist's name, address, and telephone number;
2. The serial number;
3. The date the drug or device is dispensed;
4. The patient's name;
5. Name, strength, and quantity of drug or name and quantity of device dispensed;
6. The name of the drug or device manufacturer or distributor;
7. Directions for use and cautionary statement necessary for safe and effective use of the drug or device; and
8. If a controlled substance is prescribed, the cautionary statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."

B. Before delivery to the patient, the dentist shall prepare and package the drug or device to ensure compliance with the prescription and personally inform the patient of the name of the drug or device, directions for its use, precautions, and storage requirements.

C. A dentist shall purchase all dispensed drugs and devices from a manufacturer, distributor, or pharmacy that is properly licensed in this state or one of the other 49 states, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States of America.

D. When dispensing a prescription drug or device from a prescription order, a dentist shall perform the following professional practices:

1. Verify the legality and pharmaceutical feasibility of dispensing a drug based upon:
 - a. A patient's allergies,
 - b. Incompatibilities with a patient's currently-taken medications,
 - c. A patient's use of unusual quantities of dangerous drugs or narcotics, and
 - d. The frequency of refills;
2. Verify that the dosage is within proper limits;
3. Interpret the prescription order;
4. Prepare, package, and label, or assume responsibility for preparing, packaging, and labeling, the drug or device dispensed under each prescription order;
5. Check the label to verify that the label precisely communicates the prescriber's directions and hand-initial each label;

6. Record, or assume responsibility for recording, the serial number and date dispensed on the front of the original prescription order; and
7. Record on the original prescription order the name or initials of the dentist who dispensed the order.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1402 renumbered to R4-11-1201, new Section R4-11-1402 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1403. Storage and Packaging

A dentist shall:

1. Keep all prescription-only drugs and devices in a secured area and control access to the secured area by written procedure. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
2. Keep all controlled substances secured in a locked cabinet or room, control access to the cabinet or room by written procedure, and maintain an ongoing inventory of the contents. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
3. Maintain drug storage areas so that the temperature in the drug storage areas does not exceed 85° F;
4. Not dispense a drug or device that has expired or is improperly labeled;
5. Not redispense a drug or device that has been returned;
6. Dispense a drug or device:
 - a. In a prepackaged container or light-resistant container with a consumer safety cap, unless the patient or patient's representative requests a non-safety cap; and
 - b. With a label that is mechanically or electronically printed;
7. Destroy an outdated, deteriorated, or defective controlled substance according to Drug Enforcement Administration regulations or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration; and
8. Destroy an outdated, deteriorated, or defective non-controlled substance drug or device by returning it to the supplier or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1403 renumbered to R4-11-1202, new Section R4-11-1403 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1404. Recordkeeping

A. A dentist shall:

1. Chronologically date and sequentially number prescription orders in the order that the drugs or devices are originally dispensed;
2. Sequentially file orders separately from patient records, as follows:
 - a. File Schedule II drug orders separately from all other prescription orders;
 - b. File Schedule III, IV, and V drug orders separately from all other prescription orders; and
 - c. File all other prescription orders separately from orders specified in subsections (A)(2)(a) and (b);
3. Record the name of the manufacturer or distributor of the drug or device dispensed on each prescription order and label;

4. Record the name or initials of the dentist dispensing the drug or device on each prescription order and label; and
 5. Record the date the drug or device is dispensed on each prescription order and label.
- B. A dentist shall record in the patient's dental record the name, dosage form, and strength of the drug or device dispensed, the quantity or volume dispensed, the date the drug or device is dispensed, and the dental therapeutic reasons for dispensing the drug or device.
- C. A dentist shall maintain:
1. Purchase records of all drugs and devices for three years from the date purchased; and
 2. Dispensing records of all drugs and devices for three years from the date dispensed.
- D. A dentist who dispenses controlled substances:
1. Shall inventory Schedule II, III, IV, and V controlled substances as prescribed by A.R.S. § 36-2523;
 2. Shall perform a controlled substance inventory on March 1 annually, if directed by the Board, and at the opening or closing of a dental practice;
 3. Shall maintain the inventory for three years from the inventory date;
 4. May use one inventory book for all controlled substances;
 5. When conducting an inventory of Schedule II controlled substances, shall take an exact count;
 6. When conducting an inventory of Schedule III, IV, and V controlled substances, shall take an exact count or may take an estimated count if the stock container contains fewer than 1001 units.
- E. A dentist shall maintain invoices for drugs and devices dispensed for three years from the date of the invoices, filed as follows:
1. File Schedule II controlled substance invoices separately from records that are not Schedule II controlled substance invoices;
 2. File Schedule III, IV, and V controlled substance invoices separately from records that are not Schedule III, IV, and V controlled substance invoices; and
 3. File all non-controlled substance invoices separately from the invoices referenced in subsections (E)(1) and (2).
- F. A dentist shall file Drug Enforcement Administration order form (DEA Form 222) for a controlled substance sequentially and separately from every other record.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1404 renumbered to R4-11-1203, new Section R4-11-1404 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1405. Compliance

- A. A dentist who determines that there has been a theft or loss of drugs or controlled substances from the dentist's office shall immediately notify a local law enforcement agency and the Board and provide written notice of the theft or loss in the following manner:
1. For non-controlled substance drug theft or loss, provide the law enforcement agency and the Board with a written report explaining the theft or loss; or
 2. For controlled substance theft or loss, complete a DEA 106 form; and
 3. Provide copies of the DEA 106 form to the Drug Enforcement Administration and the Board within seven days of the discovery.
- B. A dentist who dispenses drugs or devices in a manner inconsistent with this Article is subject to discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1405 renumbered to R4-11-1204, new Section R4-11-1405 adopted by final rulemaking at 5 A.A.R. 580, effective

February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1406. Dispensing for Profit Registration and Renewal

A. A dentist who is currently licensed to practice dentistry in Arizona may dispense controlled substances, prescription-only drugs, and prescription-only devices for profit only after providing the Board the following information:

1. A completed registration form that includes the following information:
 - a. The dentist's name and dental license number;
 - b. A list of the types of drugs and devices to be dispensed for profit, including controlled substances; and
 - c. Locations where the dentist desires to dispense the drugs and devices for profit; and
2. A copy of the dentist's current Drug Enforcement Administration Certificate of Registration for each dispensing location from which the dentist desires to dispense the drugs and devices for profit.

B. The Board shall issue a numbered certificate indicating the dentist is registered with the Board to dispense drugs and devices for profit.

C. A dentist shall renew a registration to dispense drugs and devices for profit by complying with the requirements in subsection (A) before the dentist's license renewal date. When a dentist has made timely and complete application for the renewal of a registration, the dentist may continue to dispense until the Board approves or denies the application. Failure to renew a registration shall result in immediate loss of dispensing for profit privileges.

Historical Note

Adopted effective July 21, 1995; inadvertently not published with Supp. 95-3 (Supp. 95-4). Former Section R4- 11-1406 renumbered to R4-11-1205, new Section R4-11- 1406 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1407. Renumbered

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1407 renumbered to R4-11-1206 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1408. Renumbered

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1408 renumbered to R4-11-1207 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1409. Repealed

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1409 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION

R4-11-1501. Ex-parte Communication

A complainant, licensee, certificate holder, business entity or mobile dental permit holder against whom a complaint is filed, shall not engage in ex-parte communication by means of a written or oral communication between a decision maker, fact finder, or Board member and only one party to the proceeding.

Historical Note

New Section R4-11-1501 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1502. Dental Consultant Qualifications A dentist, dental hygienist, or denturist approved as a Board dental consultant shall:

1. Possess a valid license or certificate to practice in Arizona;
2. Have practiced at least five years in Arizona; and
3. Not have been disciplined by the Board within the past five years.

Historical Note

New Section R4-11-1502 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1503. Initial Complaint Review

A. The Board's procedures for complaint notification are:

1. Board personnel shall notify the complainant and licensee, certificate holder, business entity or mobile dental permit holder by certified U.S. Mail when the following occurs:

- a. A formal interview is scheduled,
- b. The complaint is tabled,
- c. A postponement or continuance is granted, and
- d. A subpoena, notice, or order is issued.

2. Board personnel shall provide the licensee, certificate holder, business entity, or mobile dental permit holder with a copy of the complaint.

3. If a complaint alleges a violation of the state or federal criminal code, the Board shall refer the complaint to the proper law enforcement agency.

B. The Board's procedures for complaints referred to clinical evaluation are:

1. Except as provided in subsection (B)(1)(a), the president's designee shall appoint one or more dental consultants to perform a clinical evaluation. If there is more than one dental consultant, the dental consultants do not need to be present at the same time.

a. If the complaint involves a dental hygienist, denturist, or dentist who is a recognized specialist in one of the areas listed in R4-11-1102(B), the president's designee shall appoint a dental consultant from that area of practice or specialty.

b. The Board shall not disclose the identity of the licensee to a dental consultant performing a clinical examination before the Board receives the dental consultant's report.

2. The dental consultant shall prepare and submit a clinical evaluation report. The president's designee shall provide a copy of the clinical evaluation report to the licensee or certificate holder. The licensee or certificate holder may submit a written response to the clinical evaluation report.

Historical Note

New Section R4-11-1503 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1504. Postponement of Interview

A. The licensee, certificate holder, business entity, or mobile dental permit holder may request a postponement of a formal interview. The Board or its designee shall grant a postponement until the

next regularly scheduled Board meeting if the licensee, certificate holder, business entity, or mobile dental permit holder makes a postponement request and the request:

1. Is made in writing,
2. States the reason for the postponement, and
3. Is received by the Board within 15 calendar days after the date the respondent received the formal interview request.

B. Within 48 hours of receipt of a request for postponement of a formal interview, the Board or its designee shall:

1. Review and either deny or approve the request for postponement; and
2. Notify in writing the complainant and licensee, certificate holder, business entity, or mobile dental permit holder of the decision to either deny or approve the request for postponement.

Historical Note

New Section R4-11-1504 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 3669, effective April 30, 2003 (Supp. 03-3). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

ARTICLE 16. EXPIRED

R4-11-1601. Expired

Historical Note

New Section R4-11-1601 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 14 A.A.R. 3183, effective April 30, 2008.

ARTICLE 17. REHEARING OR REVIEW

R4-11-1701. Procedure

A. Except as provided in subsection (F), a licensee, certificate holder, or business entity who is aggrieved by an order issued by the Board may file a written motion for rehearing or review with the Board, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the grounds for rehearing or review.

B. A licensee, certificate holder, or business entity filing a motion for rehearing or review under this rule may amend the motion at any time before it is ruled upon by the Board. The opposing party may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion, and may permit oral argument.

C. The Board may grant a rehearing or review of the order for any of the following causes materially affecting a licensee, certificate holder, or business entity's rights:

1. Irregularity in the proceedings of the Board or any order or abuse of discretion, which deprived a licensee, certificate holder, or business entity of a fair hearing;
2. Misconduct of the Board, its personnel, the administrative law judge, or the prevailing party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Excessive or insufficient penalties;
5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding;
6. That the findings of fact or decision is arbitrary, capricious, or an abuse of discretion;
7. That the findings of fact or decision is not justified by the evidence or is contrary to law; or
8. Newly discovered, material evidence which could not, with reasonable diligence, have been discovered and produced at the original hearing.

D. The Board may affirm or modify the order or grant a rehearing or review to all or part of the issues for any of the reasons in subsection (C). The Board, within the time for filing a motion for rehearing or review, may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. An order granting a rehearing or review shall specify the grounds on which rehearing or review is granted, and any rehearing or review shall cover only those matters specified.

E. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after such service, serve opposing affidavits.

F. If the Board makes specific findings that the immediate effectiveness of the order is necessary for the preservation of public health and safety and that a rehearing or review is impracticable, unnecessary, or contrary to the public interest, the order may be issued as a final order without an opportunity for a rehearing or review. If an order is issued as a final order without an opportunity or rehearing or review, the aggrieved party shall make an application for judicial review of the order within the time limits permitted for application for judicial review of the Board's final order.

G. The Board shall rule on the motion for rehearing or review within 15 days after the response has been filed, or at the Board's next meeting after the motion is received, whichever is later.

Historical Note

New Section R4-11-1701 renumbered from R4-11-701 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 21 A.A.R. 2971, effective January 2, 2016 (Supp. 15-4).

ARTICLE 18. BUSINESS ENTITIES

R4-11-1801. Application

Before offering dental services, a business entity required to be registered under A.R.S. § 32-1213 shall apply for registration on an application form supplied by the Board. In addition to the requirements of A.R.S. § 32-1213(B) and the fee under R4-11-402, the registration application shall include a sworn statement from the applicant that:

1. The information provided by the business entity is true and correct, and
2. No information is omitted from the application.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1802. Display of Registration

A. A business entity shall ensure that the receipt for the current registration period is:

1. Conspicuously displayed in the dental practice in a manner that is always readily observable by patients and visitors, and
2. Exhibited to members of the Board or to duly authorized agents of the Board on request.

B. A business entity's receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

ARIZONA

STATE BOARD OF DENTAL EXAMINERS



Statutes & Rules

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R4-11-1407	Renumbered
R4-11-1408	Renumbered
R4-11-1409	Repealed

Article 15 – Complaints, Investigations, Disciplinary Action

R4-11-1501	Ex-parte Communication
R4-11-1502	Dental Consultant Qualifications
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ARIZONA REVISED STATUTES

Dentistry – Chapter 11

Article 1 – Dental Board

32-1201. [Definitions](#)

In this chapter, unless the context otherwise requires:

1. "Affiliated practice dental hygienist" means any licensed dental hygienist who is able, pursuant to section 32-1289.01, to initiate treatment based on the dental hygienist's assessment of a patient's needs according to the terms of a written affiliated practice agreement with a dentist, to treat the patient without the presence of a dentist and to maintain a provider-patient relationship.
2. "Auxiliary personnel" means all dental assistants, dental technicians, dental x-ray technicians and other persons employed by dentists or firms and businesses providing dental services to dentists.
3. "Board" means the state board of dental examiners.
4. "Business entity" means a business organization that has an ownership that includes any persons who are not licensed or certified to provide dental services in this state, that offers to the public professional services regulated by the board and that is established pursuant to the laws of any state or foreign country.
5. "Dental assistant" means any person who acts as an assistant to a dentist, dental therapist or dental hygienist by rendering personal services to a patient that involve close proximity to the patient while the patient is under treatment or observation or undergoing diagnostic procedures.
6. "Dental hygienist" means any person who is licensed and engaged in the general practice of dental hygiene and all related and associated duties, including educational, clinical and therapeutic dental hygiene procedures.
7. "Dental incompetence" means lacking in sufficient dentistry knowledge or skills, or both, in that field of dentistry in which the dentist, dental therapist, denturist or dental hygienist concerned engages, to a degree likely to endanger the health of that person's patients.
8. "Dental laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, fabricates artificial teeth, prosthetic appliances or other mechanical and artificial contrivances designed to correct or alleviate injuries or defects, both developmental and acquired, disorders or deficiencies of the human oral cavity, teeth, investing tissues, maxilla or mandible or adjacent associated structures.
9. "Dental therapist" means any person who is licensed and engaged in the general practice of dental therapy and all related and associated duties, including educational, clinical and therapeutic dental therapy procedures.
10. "Dental x-ray laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, performs dental and maxillofacial radiography, including cephalometrics, panoramic and maxillofacial tomography and other dental related nonfluoroscopic diagnostic imaging modalities.

11. "Dentistry", "dentist" and "dental" mean the general practice of dentistry and all specialties or restricted practices of dentistry.

12. "Denturist" means a person practicing denture technology pursuant to article 5 of this chapter.

13. "Disciplinary action" means regulatory sanctions that are imposed by the board in combination with, or as an alternative to, revocation or suspension of a license and that may include:

(a) Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.

(b) Imposition of restrictions on the scope of practice.

(c) Imposition of peer review and professional education requirements.

(d) Imposition of censure or probation requirements best adapted to protect the public welfare, which may include a requirement for restitution to the patient resulting from violations of this chapter or rules adopted under this chapter.

14. "Irregularities in billing" means submitting any claim, bill or government assistance claim to any patient, responsible party or third-party payor for dental services rendered that is materially false with the intent to receive unearned income as evidenced by any of the following:

(a) Charges for services not rendered.

(b) Any treatment date that does not accurately reflect the date when the service and procedures were actually completed.

(c) Any description of a dental service or procedure that does not accurately reflect the actual work completed.

(d) Any charge for a service or procedure that cannot be clinically justified or determined to be necessary.

(e) Any statement that is material to the claim and that the licensee knows is false or misleading.

(f) An abrogation of the copayment provisions of a dental insurance contract by a waiver of all or a part of the copayment from the patient if this results in an excessive or fraudulent charge to a third party or if the waiver is used as an enticement to receive dental services from that provider. This subdivision does not interfere with a contractual relationship between a third-party payor and a licensee or business entity registered with the board.

(g) Any other practice in billing that results in excessive or fraudulent charges to the patient.

15. "Letter of concern" means an advisory letter to notify a licensee or a registered business entity that, while the evidence does not warrant disciplinary action, the board believes that the licensee or registered business entity should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in board action against the practitioner's license or the business entity's registration. A letter of concern is not a disciplinary action. A letter of concern is a public document and may be used in a future disciplinary action.

16. "Licensed" means licensed pursuant to this chapter.

17. "Place of practice" means each physical location at which a person who is licensed pursuant to this chapter performs services subject to this chapter.

18. "Primary mailing address" means the address on file with the board and to which official board correspondence, notices or documents are delivered in a manner determined by the board.

19. "Recognized dental hygiene school" means a school that has a dental hygiene program with a minimum two academic year curriculum, or the equivalent of four semesters, and that is approved by the board and accredited by the American dental association commission on dental accreditation.

20. "Recognized dental school" means a dental school that is accredited by the American dental association commission on dental accreditation.

21. "Recognized dental therapy school" means a school that is accredited or that has received initial accreditation by the American dental association commission on dental accreditation.

22. "Recognized denturist school" means a denturist school that maintains standards of entrance, study and graduation and that is accredited by the United States department of education or the council on higher education accreditation.

23. "Supervised personnel" means all dental hygienists, dental assistants, dental laboratory technicians, dental therapists, denturists, dental x-ray laboratory technicians and other persons supervised by licensed dentists.

24. "Teledentistry" means the use of data transmitted through interactive audio, video or data communications for the purposes of examination, diagnosis, treatment planning, consultation and directing the delivery of treatment by dentists and dental providers in settings permissible under this chapter or specified in rules adopted by the board.

32-1201.01. [Definition of unprofessional conduct](#)

For the purposes of this chapter, "unprofessional conduct" means the following acts, whether occurring in this state or elsewhere:

1. Intentionally betraying a professional confidence or intentionally violating a privileged communication except as either of these may otherwise be required by law. This paragraph does not prevent members of the board from the full and free exchange of information with the licensing and disciplinary boards of other states, territories or districts of the United States or foreign countries, with the Arizona state dental association or any of its component societies or with the dental societies of other states, counties, districts, territories or foreign countries.

2. Using controlled substances as defined in section 36-2501, narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401, or hypnotic drugs, including acetylurea derivatives, barbituric acid derivatives, chloral, paraldehyde, phenylhydantoin derivatives, sulfonmethane derivatives or any compounds, mixtures or preparations that may be used for producing hypnotic effects, or alcohol to the extent that it affects the ability of the dentist, dental therapist, denturist or dental hygienist to practice that person's profession.

3. Prescribing, dispensing or using drugs for other than accepted dental therapeutic purposes or for other than medically indicated supportive therapy in conjunction with managing a patient's dental needs.
4. Committing gross malpractice or repeated acts constituting malpractice.
5. Acting or assuming to act as a member of the board if this is not true.
6. Procuring or attempting to procure a certificate of the national board of dental examiners or a license to practice dentistry or dental hygiene by fraud or misrepresentation or by knowingly taking advantage of the mistake of another.
7. Having professional connection with or lending one's name to an illegal practitioner of dentistry or any of the other healing arts.
8. Representing that a manifestly not correctable condition, disease, injury, ailment or infirmity can be permanently corrected, or that a correctable condition, disease, injury, ailment or infirmity can be corrected within a stated time, if this is not true.
9. Offering, undertaking or agreeing to correct, cure or treat a condition, disease, injury, ailment or infirmity by a secret means, method, device or instrumentality.
10. Refusing to divulge to the board, on reasonable notice and demand, the means, method, device or instrumentality used in the treatment of a condition, disease, injury, ailment or infirmity.
11. Dividing a professional fee or offering, providing or receiving any consideration for patient referrals among or between dental care providers or dental care institutions or entities. This paragraph does not prohibit the division of fees among licensees who are engaged in a bona fide employment, partnership, corporate or contractual relationship for the delivery of professional services.
12. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of dentistry.
13. Having a license refused, revoked or suspended or any other disciplinary action taken against a dentist by, or voluntarily surrendering a license in lieu of disciplinary action to, any other state, territory, district or country, unless the board finds that this action was not taken for reasons that relate to the person's ability to safely and skillfully practice dentistry or to any act of unprofessional conduct.
14. Committing any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.
15. Obtaining a fee by fraud or misrepresentation, or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.
16. Committing repeated irregularities in billing.
17. Employing unlicensed persons to perform or aiding and abetting unlicensed persons in the performance of work that can be done legally only by licensed persons.

18. Practicing dentistry under a false or assumed name in this state, other than as allowed by section 32-1262.
19. Wilfully or intentionally causing or permitting supervised personnel or auxiliary personnel operating under the licensee's supervision to commit illegal acts or perform an act or operation other than that permitted under article 4 of this chapter and rules adopted by the board pursuant to section 32-1282.
20. Committing the following advertising practices:
 - (a) Publishing or circulating, directly or indirectly, any false, fraudulent or misleading statements concerning the skill, methods or practices of the licensee or of any other person.
 - (b) Advertising in any manner that tends to deceive or defraud the public.
21. Failing to dispense drugs and devices in compliance with article 6 of this chapter.
22. Failing to comply with a board order, including an order of censure or probation.
23. Failing to comply with a board subpoena in a timely manner.
24. Failing or refusing to maintain adequate patient records.
25. Failing to allow properly authorized board personnel, on demand, to inspect the place of practice and examine and have access to documents, books, reports and records maintained by the licensee or certificate holder that relate to the dental practice or dental-related activity.
26. Refusing to submit to a body fluid examination as required through a monitored treatment program or pursuant to a board investigation into a licensee's or certificate holder's alleged substance abuse.
27. Failing to inform a patient of the type of material the dentist will use in the patient's dental filling and the reason why the dentist is using that particular filling.
28. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be:
 - (a) Professionally incompetent.
 - (b) Engaging in unprofessional conduct.
 - (c) Impaired by drugs or alcohol.
 - (d) Mentally or physically unable to safely engage in the activities of a dentist, dental therapist, denturist or dental hygienist pursuant to this chapter.
29. Filing a false report pursuant to paragraph 28 of this section.

30. Practicing dentistry, dental therapy, dental hygiene or denturism in a business entity that is not registered with the board as required by section 32-1213.

31. Dispensing a schedule II controlled substance that is an opioid.

32. Providing services or procedures as a dental therapist that exceed the scope of practice or exceed the services or procedures authorized in the written collaborative practice agreement.

32-1202. Scope of practice; practice of dentistry

For the purposes of this chapter, the practice of dentistry is the diagnosis, surgical or nonsurgical treatment and performance of related adjunctive procedures for any disease, pain, deformity, deficiency, injury or physical condition of the human tooth or teeth, alveolar process, gums, lips, cheek, jaws, oral cavity and associated tissues, including the removal of stains, discolorations and concretions.

32-1203. State board of dental examiners; qualifications of members; terms

A. The state board of dental examiners is established consisting of six licensed dentists, two licensed dental hygienists, two public members and one business entity member appointed by the governor for a term of four years, to begin and end on January 1.

B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

C. The business entity member and the public members may participate in all board proceedings and determinations, except in the preparing, giving or grading of examinations for licensure. Dental hygienist board members may participate in all board proceedings and determinations, except in the preparing, giving and grading of examinations that do not relate to dental hygiene procedures.

D. A board member shall not serve more than two consecutive terms.

E. For the purposes of this section, business entity member does not include a person who is licensed pursuant to this chapter.

32-1204. Removal from office

The governor may remove a member of the board for persistent neglect of duty, incompetency, unfair, biased, partial or dishonorable conduct, or gross immorality. Conviction of a felony or revocation of the dental license of a member of the board shall ipso facto terminate his membership.

32-1205. Organization; meetings; quorum; staff

A. The board shall elect from its membership a president and a vice-president who shall act also as secretary-treasurer.

B. Board meetings shall be conducted pursuant to title 38, chapter 3, article 3.1. A majority of the board constitutes a quorum. Beginning September 1, 2015, meetings held pursuant to this

subsection shall be audio recorded and the audio recording shall be posted to the board's website within five business days after the meeting.

C. The board may employ an executive director, subject to title 41, chapter 4, article 4 and legislative appropriation.

D. The board or the executive director may employ personnel, as necessary, subject to title 41, chapter 4, article 4 and legislative appropriation.

32-1206. Compensation of board

Members of the board are entitled to receive compensation in the amount of two hundred fifty dollars for each day actually spent in performing necessary work authorized by the board and all expenses necessarily and properly incurred while performing this work.

32-1207. Powers and duties; executive director; immunity; fees; definition

A. The board shall:

1. Adopt rules that are not inconsistent with this chapter for regulating its own conduct, for holding examinations and for regulating the practice of dentists and supervised personnel and registered business entities, provided:

(a) Regulation of supervised personnel is based on the degree of education and training of the supervised personnel, the state of scientific technology available and the necessary degree of supervision of the supervised personnel by dentists.

(b) Except as provided pursuant to sections 32-1276.03 and 32-1281, only licensed dentists may perform diagnosis and treatment planning, prescribe medication and perform surgical procedures on hard and soft tissues.

(c) Only a licensed dentist, a dental therapist either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement or a dental hygienist in consultation with a dentist may perform examinations, oral health assessments and treatment sequencing for dental hygiene procedures.

2. Adopt a seal.

3. Maintain a record that is available to the board at all times of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses and the disposition of complaints. The existence of a pending complaint or investigation shall not be disclosed to the public. Records of complaints shall be available to the public, except only as follows:

(a) If the board dismisses or terminates a complaint, the record of the complaint shall not be available to the public.

(b) If the board has issued a nondisciplinary letter of concern, the record of the complaint shall be available to the public only for a period of five years after the date the board issued the letter of concern.

(c) If the board has required additional nondisciplinary continuing education pursuant to section 32-1263.01 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

(d) If the board has assessed a nondisciplinary civil penalty pursuant to section 32-1208 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

4. Establish a uniform and reasonable standard of minimum educational requirements consistent with the accreditation standards of the American dental association commission on dental accreditation to be observed by dental schools, dental therapy schools and dental hygiene schools in order to be classified as recognized dental schools, dental therapy schools or dental hygiene schools.

5. Establish a uniform and reasonable standard of minimum educational requirements that are consistent with the accreditation standards of the United States department of education or the council on higher education accreditation and that must be observed by denture technology schools in order to be classified as recognized denture technology schools.

6. Determine the reputability and classification of dental schools, dental therapy schools, dental hygiene schools and denture technology schools in accordance with their compliance with the standard set forth in paragraph 4 or 5 of this subsection, whichever is applicable.

7. Issue licenses to persons who the board determines are eligible for licensure pursuant to this chapter.

8. Determine the eligibility of applicants for restricted permits and issue restricted permits to those found eligible.

9. Pursuant to section 32-1263.02, investigate charges of misconduct on the part of licensees and persons to whom restricted permits have been issued.

10. Issue a letter of concern, which is not a disciplinary action but refers to practices that may lead to a violation and to disciplinary action.

11. Issue decrees of censure, fix periods and terms of probation, suspend or revoke licenses, certificates and restricted permits, as the facts may warrant, and reinstate licenses, certificates and restricted permits in proper cases.

12. Collect and disburse monies.

13. Perform all other duties that are necessary to enforce this chapter and that are not specifically or by necessary implication delegated to another person.

14. Establish criteria for the renewal of permits issued pursuant to board rules relating to general anesthesia and sedation.

B. The board may:

1. Sue and be sued.

2. Issue subpoenas, including subpoenas to the custodian of patient records, compel attendance of witnesses, administer oaths and take testimony concerning all matters within the board's jurisdiction. If a person refuses to obey a subpoena issued by the board, the refusal shall be certified to the superior court and proceedings shall be instituted for contempt of court.

3. Adopt rules:

(a) Prescribing requirements for continuing education for renewal of all licenses issued pursuant to this chapter.

(b) Prescribing educational and experience prerequisites for the administration of intravenous or intramuscular drugs for the purpose of sedation or for use of general anesthetics in conjunction with a dental treatment procedure.

(c) Prescribing requirements for obtaining licenses for retired licensees or licensees who have a disability, including the triennial license renewal fee.

4. Hire consultants to assist the board in the performance of its duties and employ persons to provide investigative, professional and clerical assistance as the board deems necessary.

5. Contract with other state or federal agencies as required to carry out the purposes of this chapter.

6. If determined by the board, order physical, psychological, psychiatric and competency evaluations of licensed dentists, dental therapists and dental hygienists, certified denturists and applicants for licensure and certification at the expense of those individuals.

C. The executive director or the executive director's designee may:

1. Issue and renew licenses, certificates and permits to applicants who meet the requirements of this chapter.

2. Initiate an investigation if evidence appears to demonstrate that a dentist, dental therapist, dental hygienist, denturist or restricted permit holder may be engaged in unprofessional conduct or may be unable to safely practice dentistry.

3. Initiate an investigation if evidence appears to demonstrate that a business entity may be engaged in unethical conduct.

4. Subject to board approval, enter into a consent agreement with a dentist, dental therapist, denturist, dental hygienist or restricted permit holder if there is evidence of unprofessional conduct.

5. Subject to board approval, enter into a consent agreement with a business entity if there is evidence of unethical conduct.

6. Refer cases to the board for a formal interview.

7. If delegated by the board, enter into a stipulation agreement with a person under the board's jurisdiction for the treatment, rehabilitation and monitoring of chemical substance abuse or misuse.

D. Members of the board are personally immune from liability with respect to all acts done and actions taken in good faith and within the scope of their authority.

E. The board by rule shall require that a licensee obtain a permit for the application of general anesthesia, semiconscious sedation or conscious sedation, shall establish and collect a fee of not more than three hundred dollars to cover administrative costs connected with issuing the permit and shall conduct inspections to ensure compliance.

F. The board by rule may establish and collect fees for license verification, board meeting agendas and minutes, published lists and mailing labels.

G. This section does not prohibit the board from conducting its authorized duties in a public meeting.

H. For the purposes of this section, "record of complaint" means the document reflecting the final disposition of a complaint or investigation.

32-1208. Failure to respond to subpoena; civil penalty

In addition to any disciplinary action authorized by statute, the board may assess a nondisciplinary civil penalty in an amount not to exceed five hundred dollars for a licensee who fails to respond to a subpoena issued by the board pursuant to this chapter.

32-1209. Admissibility of records in evidence

A copy of any part of the recorded proceedings of the board certified by the executive director, or a certificate by the executive director that any asserted or purported record, name, license number, restricted permit number or action is not entered in the recorded proceedings of the board, may be admitted as evidence in any court in this state. A person making application and paying a fee set by the board may procure from the executive director a certified copy of any portion of the records of the board unless these records are classified as confidential as provided by law. Unless otherwise provided by law, all records concerning an investigation, examination materials, records of examination grading and applicants' performance and transcripts of educational institutions concerning applicants are confidential and are not public records. "Records of applicants' performance" does not include records of whether an applicant passed or failed an examination.

32-1210. Annual report

A. Not later than October 1 of each year, the board shall make an annual written report to the governor for the preceding year that includes the following information:

1. The number of licensed dentists in the state.
2. The number of licenses issued during the preceding year and to whom issued.
3. The number of examinations held and the dates of the examinations.
4. The facts with respect to accusations filed with the board, of hearings held in connection with those accusations and the results of those hearings.
5. The facts with respect to prosecution of persons charged with violations of this chapter.

6. A full and complete statement of financial transactions of the board.
 7. Any other matters that the board wishes to include in the report or that the governor requires.
- B. On request of the governor the board shall submit a supplemental report.

32-1212. Dental board fund

- A. Except as provided in subsection C of this section, pursuant to sections 35-146 and 35-147, the executive director of the board shall each month deposit ten per cent of all fees, fines and other revenue received by the board, in the state general fund and deposit the remaining ninety per cent in the dental board fund.
- B. Monies deposited in the dental board fund shall be subject to the provisions of section 35-143.01.
- C. Monies from administrative penalties received pursuant to section 32-1263.01 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-1213. Business entities; registration; renewal; civil penalty; exceptions

- A. A business entity may not offer dental services pursuant to this chapter unless:
1. The entity is registered with the board pursuant to this section.
 2. The services are conducted by a licensee pursuant to this chapter.
- B. The business entity must file a registration application on a form provided by the board. The application must include:
1. A description of the entity's services offered to the public.
 2. The name of any dentist who is authorized to provide and who is responsible for providing the dental services offered at each office.
 3. The names and addresses of the officers and directors of the business entity.
 4. A registration fee prescribed by the board in rule.
- C. A business entity must file a separate registration application and pay a fee for each branch office in this state.
- D. A registration expires three years after the date the board issues the registration. A business entity that wishes to renew a registration must submit an application for renewal as prescribed by the board on a triennial basis on a form provided by the board before the expiration date. An entity that fails to renew the registration before the expiration date is subject to a late fee as prescribed by the board by rule. The board may stagger the dates for renewal applications.
- E. The business entity must notify the board in writing within thirty days after any change:

1. In the entity's name, address or telephone number.

2. In the officers or directors of the business entity.

3. In the name of any dentist who is authorized to provide and who is responsible for providing the dental services in any facility.

F. The business entity shall establish a written protocol for the secure storage, transfer and access of the dental records of the business entity's patients. This protocol must include, at a minimum, procedures for:

1. Notifying patients of the future locations of their records if the business entity terminates or sells the practice.

2. Disposing of unclaimed dental records.

3. The timely response to requests by patients for copies of their records.

G. The business entity must notify the board within thirty days after the dissolution of any registered business entity or the closing or relocation of any facility and must disclose to the board the entity's procedure by which its patients may obtain their records.

H. The board may do any of the following pursuant to its disciplinary procedures if an entity violates the board's statutes or rules:

1. Refuse to issue a registration.

2. Suspend or revoke a registration.

3. Impose a civil penalty of not more than \$2,000 for each violation.

4. Enter a decree of censure.

5. Issue an order prescribing a period and terms of probation that are best adapted to protect the public welfare and that may include a requirement for restitution to a patient for a violation of this chapter or rules adopted pursuant to this chapter.

6. Issue a letter of concern if a business entity's actions may cause the board to take disciplinary action.

I. The board shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this section in the state general fund.

J. This section does not apply to:

1. A sole proprietorship or partnership that consists exclusively of dentists who are licensed pursuant to this chapter.

2. Any of the following entities licensed under title 20:

- (a) A service corporation.
 - (b) An insurer authorized to transact disability insurance.
 - (c) A prepaid dental plan organization that does not provide directly for prepaid dental services.
 - (d) A health care services organization that does not provide directly for dental services.
3. A professional corporation or professional limited liability company, the shares of which are exclusively owned by dentists who are licensed pursuant to this chapter and that is formed to engage in the practice of dentistry pursuant to title 10, chapter 20 or title 29 relating to professional limited liability companies.
4. A facility regulated by the federal government or a state, district or territory of the United States.
5. An administrator or executor of the estate of a deceased dentist or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent for not more than one year after the date the board receives notice of the dentist's death or incapacitation pursuant to section 32-1270.
- K. A facility that offers dental services to the public by persons licensed under this chapter shall be registered by the board unless the facility is any of the following:
- 1. Owned by a dentist who is licensed pursuant to this chapter.
 - 2. Regulated by the federal government or a state, district or territory of the United States.
- L. Except for issues relating to insurance coding and billing that require the name, signature and license number of the dentist providing treatment, this section does not:
- 1. Authorize a licensee in the course of providing dental services for an entity registered pursuant to this section to disregard or interfere with a policy or practice established by the entity for the operation and management of the business.
 - 2. Authorize an entity registered pursuant to this section to establish or enforce a business policy or practice that may interfere with the clinical judgment of the licensee in providing dental services for the entity or may compromise a licensee's ability to comply with this chapter.
- M. The board shall adopt rules that provide a method for the board to receive the assistance and advice of business entities licensed pursuant to this chapter in all matters relating to the regulation of business entities.
- N. An individual currently holding a surrendered or revoked license to practice dentistry or dental hygiene in any state or jurisdiction in the United States may not have a majority ownership interest in the business entity registered pursuant to this section. Revocation and surrender of licensure shall be limited to disciplinary actions resulting in loss of license or surrender of license instead of disciplinary action. Dentists or dental hygienists affected by this subsection shall have one year after the surrender or revocation to divest themselves of their ownership interest. This subsection does not apply to publicly held companies. For the purposes of this subsection, "majority ownership interest" means an ownership interest greater than fifty percent.

Article 2 – Licensure

32-1231. Persons not required to be licensed

This chapter does not prohibit:

1. A dentist, dental therapist or dental hygienist who is officially employed in the service of the United States from practicing dentistry in the dentist's, dental therapist's or dental hygienist's official capacity, within the scope of that person's authority, on persons who are enlisted in, directly connected with or under the immediate control of some branch of service of the United States.
2. A person, whether or not licensed by this state, from practicing dental therapy either:
 - (a) In the discharge of official duties on behalf of the United States government, including the United States department of veterans affairs, the United States public health service and the Indian health service.
 - (b) While employed by tribal health programs authorized pursuant to Public Law 93-638 or urban Indian health programs.
3. An intern or student of dentistry, dental therapy or dental hygiene from operating in the clinical departments or laboratories of a recognized dental school, dental therapy school, dental hygiene school or hospital under the supervision of a dentist.
4. An unlicensed person from performing for a licensed dentist merely mechanical work on inert matter not within the oral cavity in the construction, making, alteration or repairing of any artificial dental substitute or any dental restorative or corrective appliance, if the casts or impressions for that work have been furnished by a licensed dentist and the work is directly supervised by the dentist for whom done or under a written authorization signed by the dentist, but the burden of proving that written authorization or direct supervision is on the person charged with having violated this provision.
5. A clinician who is not licensed in this state from giving demonstrations, before bona fide dental societies, study clubs and groups of professional students, that are free to the persons on whom made.
6. The state director of dental public health from performing the director's administrative duties as prescribed by law.
7. A dentist or dental hygienist to whom a restricted permit has been issued from practicing dentistry or dental hygiene in this state as provided in sections 32-1237 and 32-1292.
8. A dentist, dental therapist or dental hygienist who is not practicing on the public at large from practicing in a recognized dental school, recognized dental therapy school or recognized dental hygiene school.

32-1232. Qualifications of applicant; application; fee; fingerprint clearance card

A. An applicant for licensure shall be of good moral character, shall meet the requirements of section 32-1233 and shall hold a diploma conferring a degree of doctor of dental medicine or doctor of dental surgery from a recognized dental school.

B. Each candidate shall submit a written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of three hundred dollars. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

C. The board may deny an application for a license, for license renewal or for a restricted permit if the applicant:

1. Has committed any act that would be cause for censure, probation or suspension or revocation of a license under this chapter.
2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required by this chapter.
3. Knowingly made any false statement in the application.
4. Has had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
6. Has surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license, for license renewal or for a restricted permit if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1233. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The written national dental board examinations.
2. The western regional examining board examination or a clinical examination administered by another state or regional testing agency in the United States within five years preceding filing the application.
3. The Arizona dental jurisprudence examination.

32-1234. Dental consultant license

A. A person may apply for a dental consultant license if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has continuously held a license to practice dentistry for at least twenty-five years issued by one or more states or territories of the United States or the District of Columbia, but is not currently licensed to practice dentistry in Arizona.

2. Is of good moral character.

3. Has not had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

4. Is not currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Has not surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Meets the applicable requirements of section 32-1232.

7. Meets the requirements of section 32-1233, paragraphs 1 and 3. If an applicant has taken a state written theory examination instead of the written national dental board examinations, the applicant must provide the board with official documentation of passing the written theory examinations in the state where the applicant holds a current license. The board shall then determine the applicant's eligibility for a license pursuant to this section.

8. Meets the application requirements as prescribed in rule by the board.

B. The board shall suspend an application for a dental consultant license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction in the United States. The board shall not issue or deny a license to the applicant until the investigation is resolved.

C. A person to whom a dental consultant license is issued shall practice dentistry only in the course of the person's employment or on behalf of an entity licensed under title 20 with the practice limited to supervising or conducting utilization review or other claims or case management activity on behalf of the entity licensed pursuant to title 20. A person who holds a dental consultant license is prohibited from providing direct patient care.

D. This section shall not be deemed to require a person to apply for or hold a dental consultant license in order for that person to serve as a consultant to or engage in claims review activity for an entity licensed pursuant to title 20.

E. Except as provided in subsection B of this section, a dental consultant licensee is subject to all of the provisions of this chapter that are applicable to licensed dentists.

32-1235. Reinstatement of license or certificate; application for previously denied license or certificate

A. On written application the board may issue a new license or certificate to a dentist, dental therapist, dental hygienist or denturist whose license or certificate was previously suspended or

revoked by the board or surrendered by the applicant if the applicant demonstrates to the board's satisfaction that the applicant is completely rehabilitated with respect to the conduct that was the basis for the suspension, revocation or surrender. In making its decision, the board shall determine:

1. That the applicant has not engaged in any conduct during the suspension, revocation or surrender period that would have constituted a basis for revocation pursuant to section 32-1263.

2. If a criminal conviction was a basis for the suspension, revocation or surrender, that the applicant's civil rights have been fully restored pursuant to statute or any other applicable recognized judicial or gubernatorial order.

3. That the applicant has made restitution to any aggrieved person as ordered by a court of competent jurisdiction.

4. That the applicant demonstrates any other standard of rehabilitation the board determines is appropriate.

B. Except as provided in subsection C of this section, a person may not submit an application for reinstatement less than five years after the date of suspension, revocation or surrender.

C. The board shall vacate its previous order to suspend or revoke a license or certificate if that suspension or revocation was based on a conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The person may submit an application for reinstatement as soon as the court enters the reversal.

D. An applicant for reinstatement must comply with all initial licensing or certification requirements prescribed by this chapter.

E. A person whose application for a license or certificate has been denied for failure to meet academic requirements may apply for licensure or certification not less than two years after the denial.

F. A person whose application for a license has been denied pursuant to section 32-1232, subsection C may apply for licensure not less than five years after the denial.

[32-1236. Dentist triennial licensure; continuing education; license reinstatement; license for each place of practice; notice of change of address or place of practice; retired and disabled license status; penalties](#)

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birthday every third year. On or before the licensee's birthday every third year, every licensed dentist shall submit to the board a complete renewal application and pay a license renewal fee of not more than \$650, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dentist or to a dentist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year

immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the licensee's birthday of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birthday.

C. A person applying for licensure for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birthday. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent licensure renewal shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a \$100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. Each licensee must provide to the board in writing both of the following:

1. A primary mailing address.
2. The address for each place of practice.

F. A licensee maintaining more than one place of practice shall obtain from the board a duplicate license for each office. A fee set by the board shall be charged for each duplicate license. The licensee shall notify the board in writing within ten days after opening the additional place or places of practice. The board shall impose a penalty of \$50 for failure to notify the board.

G. A licensee who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

H. A licensee applying for retired or disabled status shall:

1. Relinquish any prescribing privileges and shall attest by affidavit that the licensee has surrendered to the United States drug enforcement administration any registration issued pursuant to the federal controlled substances act and has surrendered to the board any registration issued pursuant to section 36-2606.
2. If the licensee holds a permit to dispense drugs and devices pursuant to section 32-1298, surrender that permit to the board.
3. Attest by affidavit that the licensee is not currently engaged in the practice of dentistry.

I. A licensee who changes the licensee's primary mailing address or place of practice address shall notify the board of that change in writing within ten days. The board shall impose a penalty of \$50 if

a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to \$100 if a licensee fails to notify it of the change within thirty days.

32-1237. Restricted permit

A person may apply for a restricted permit if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental services without compensation or at a rate that only reimburses the clinic for dental supplies and overhead costs and the applicant will receive no compensation for dental services provided at the clinic or organization.

2. Has a license to practice dentistry issued by another state or territory of the United States or the District of Columbia.

3. Has been actively engaged in one or more of the following for three years immediately preceding the application:

(a) The practice of dentistry.

(b) An approved dental residency training program.

(c) Postgraduate training deemed by the board equivalent to an approved dental residency training program.

4. Is competent and proficient to practice dentistry.

5. Meets the requirements of section 32-1232, subsection A, other than the requirement to meet section 32-1233.

32-1238. Issuance of restricted permit

A restricted permit may be issued by the board without examination or payment of fee for a period not to exceed one year or until June 30th, whichever is lesser, and shall automatically expire at that time. The board may, in its discretion and pursuant to rules or regulations not inconsistent with this chapter, renew such restricted permit for periods not to exceed one year.

32-1239. Practice under restricted permit

A person to whom a restricted permit is issued shall be entitled to practice dentistry only in the course of his employment by a recognized charitable dental clinic or organization as approved by the board, on the following conditions:

1. He shall file a copy of his employment contract with the board and such contract shall contain the following provisions:

(a) That applicant understands and acknowledges that if his employment by the charitable dental clinic or organization is terminated prior to the expiration of his restricted permit, his restricted permit

will be automatically revoked and he will voluntarily surrender the permit to the board and will no longer be eligible to practice unless or until he has satisfied the requirements of section 32-1237 or has successfully passed the examination as provided in this article.

(b) He shall be employed by a dental clinic or organization organized and operated for charitable purposes offering dental services without compensation. The term "employed" as used in this subdivision shall include the performance of dental services without compensation.

(c) He shall be subject to all the provisions of this chapter applicable to licensed dentists.

32-1240. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than two thousand dollars as prescribed by the board.

32-1241. Training permits; qualified military health professionals

A. The board shall issue a training permit to a qualified military health professional who is practicing dentistry in the United States armed forces and who is discharging the health professional's official duties by participating in a clinical training program based at a civilian hospital affiliated with the United States department of defense.

B. Before the board issues the training permit, the qualified military health professional must submit a written statement from the United States department of defense that the applicant:

1. Is a member of the United States armed forces who is performing duties for and at the direction of the United States department of defense at a location in this state approved by the United States department of defense.

2. Has a current license or is credentialed to practice dentistry in a jurisdiction of the United States.

3. Meets all required qualification standards prescribed pursuant to 10 United States Code section 1094(d) relating to the licensure requirements for health professionals.

4. Has not had a license to practice revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

5. Is not currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

6. Has not surrendered, relinquished or given up a license in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. This paragraph does not prevent the board from considering the request for a training permit of a qualified military health professional who surrendered, relinquished or gave up a license in lieu of disciplinary action by a regulatory board in another jurisdiction if that regulatory board subsequently reinstated the qualified military health professional's license.

C. The qualified military health professional may not open an office or designate a place to meet patients or receive calls relating to the practice of dentistry in this state outside of the facilities and programs of the approved civilian hospital.

D. The qualified military health professional may not practice outside of the professional's scope of practice.

E. A training permit issued pursuant to this section is valid for one year. The qualified military health professional may apply annually to the board to renew the permit. With each application to renew the qualified military health professional must submit a written statement from the United States department of defense asking the board for continuation of the training permit.

F. The board may not impose a fee to issue or renew a training permit to a qualified military health professional pursuant to this section.

Article 3 – Regulation

32-1261. Practicing without license; classification

Except as otherwise provided a person is guilty of a class 6 felony who, without a valid license or business entity registration as prescribed by this chapter:

1. Practices dentistry or any branch of dentistry as described in section 32-1202.

2. In any manner or by any means, direct or indirect, advertises, represents or claims to be engaged or ready and willing to engage in that practice as described in section 32-1202.

3. Manages, maintains or carries on, in any capacity or by any arrangement, a practice, business, office or institution for the practice of dentistry, or that is advertised, represented or held out to the public for that purpose.

32-1262. Corporate practice; display of name and license receipt or license; duplicate licenses; fee

A. It is lawful to practice dentistry as a professional corporation or professional limited liability company.

B. It is lawful to practice dentistry as a business organization if the business organization is registered as a business entity pursuant to this chapter.

C. It is lawful to practice dentistry under a name other than that of the licensed practitioners if the name is not deceptive or misleading.

D. If practicing as a professional corporation or professional limited liability company, the name and address of record of the dentist owners of the practice shall be conspicuously displayed at the entrance to each owned location.

E. If practicing as a business organization that is registered as a business entity pursuant to section 32-1213, the receipt for the current registration period must be conspicuously displayed at the entrance to each place of practice.

F. A licensee's receipt for the current licensure period shall be displayed in the licensee's place of practice in a manner that is always readily observable by patients or visitors and shall be exhibited to members of the board or to duly authorized agents of the board on request. The receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period. During the year in which the licensee is first licensed and until the receipt for the following period is received, the license shall be displayed in lieu of the receipt.

G. If a dentist maintains more than one place of practice, the board may issue one or more duplicate licenses or receipts on payment of a fee fixed by the board not exceeding twenty-five dollars for each duplicate.

H. If a licensee legally changes the licensee's name from that in which the license was originally issued, the board, on satisfactory proof of the change and surrender of the original license, if obtainable, may issue a new license in the new name and shall charge the established fee for duplicate licenses.

32-1263. Grounds for disciplinary action; definition

A. The board may invoke disciplinary action against any person who is licensed under this chapter for any of the following reasons:

1. Unprofessional conduct as defined in section 32-1201.01.
2. Conviction of a felony or of a misdemeanor involving moral turpitude, in which case the record of conviction or a certified copy is conclusive evidence.
3. Physical or mental incompetence to practice pursuant to this chapter.
4. Committing or aiding, directly or indirectly, a violation of or noncompliance with any provision of this chapter or of any rules adopted by the board pursuant to this chapter.
5. Dental incompetence as defined in section 32-1201.

B. This section does not establish a cause of action against a licensee or a registered business entity that makes a report of unprofessional conduct or unethical conduct in good faith.

C. The board may take disciplinary action against a business entity that is registered pursuant to this chapter for unethical conduct.

D. For the purposes of this section, "unethical conduct" means the following acts occurring in this state or elsewhere:

1. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be professionally incompetent, is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

2. Falsely reporting to the board that a dentist, dental therapist, denturist or dental hygienist is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

3. Obtaining or attempting to obtain a registration or registration renewal by fraud or by misrepresentation.

4. Knowingly filing with the board any application, renewal or other document that contains false information.

5. Failing to register or failing to submit a renewal registration with the board pursuant to section 32-1213.

6. Failing to provide the following persons with access to any place for which a registration has been issued or for which an application for a registration has been submitted in order to conduct a site investigation, inspection or audit:

(a) The board or its employees or agents.

(b) An authorized federal or state official.

7. Failing to notify the board of a change in officers and directors, a change of address or a change in the dentists providing services pursuant to section 32-1213, subsection E.

8. Failing to provide patient records pursuant to section 32-1264.

9. Obtaining a fee by fraud or misrepresentation or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.

10. Engaging in repeated irregularities in billing.

11. Engaging in the following advertising practices:

(a) Publishing or circulating, directly or indirectly, any false or fraudulent or misleading statements concerning the skill, methods or practices of a registered business entity, a licensee or any other person.

(b) Advertising in any manner that tends to deceive or defraud the public.

12. Failing to comply with a board subpoena in a timely manner.

13. Failing to comply with a final board order, including a decree of censure, a period or term of probation, a consent agreement or a stipulation.

14. Employing or aiding and abetting unlicensed persons to perform work that must be done by a person licensed pursuant to this chapter.

15. Engaging in any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.

16. Engaging in a policy or practice that interferes with the clinical judgment of a licensee providing dental services for a business entity or compromising a licensee's ability to comply with this chapter.

17. Engaging in a practice by which a dental hygienist, dental therapist or dental assistant exceeds the scope of practice or restrictions included in a written collaborative practice agreement.

32-1263.01. Types of disciplinary action; letter of concern; judicial review; notice; removal of notice; violation; classification

A. The board may take any one or a combination of the following disciplinary actions against any person licensed under this chapter:

1. Revocation of license to practice.

2. Suspension of license to practice.

3. Entering a decree of censure, which may require that restitution be made to an aggrieved party.

4. Issuance of an order fixing a period and terms of probation best adapted to protect the public health and safety and to rehabilitate the licensed person. The order fixing a period and terms of probation may require that restitution be made to the aggrieved party.

5. Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.

6. Imposition of a requirement for restitution of fees to the aggrieved party.

7. Imposition of restrictions on the scope of practice.

8. Imposition of peer review and professional education requirements.

9. Imposition of community service.

B. The board may issue a letter of concern if a licensee's continuing practices may cause the board to take disciplinary action. The board may also issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

C. Failure to comply with any order of the board, including an order of censure or probation, is cause for suspension or revocation of a license.

D. All disciplinary and final nondisciplinary actions or orders, not including letters of concern or advisory letters, issued by the board against a licensee or certificate holder shall be posted to that licensee's or certificate holder's profile on the board's website. For the purposes of this subsection, only final nondisciplinary actions and orders that are issued after January 1, 2018 shall be posted.

E. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

F. If the state board of dental examiners acts to modify any dentist's prescription-writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

G. The board may post a notice of its suspension or revocation of a license at the licensee's place of business. This notice shall remain posted for sixty days. A person who removes this notice without board or court authority before that time is guilty of a class 3 misdemeanor.

H. A licensee or certificate holder shall respond in writing to the board within twenty days after a notice of hearing is served. A licensee who fails to answer the charges in a complaint and notice of hearing issued pursuant to this article and title 41, chapter 6, article 10 is deemed to admit the acts charged in the complaint, and the board may revoke or suspend the license without a hearing.

32-1263.02. Investigation and adjudication of complaints; disciplinary action; civil penalty; immunity; subpoena authority; definitions

A. The board on its motion, or the executive director if delegated by the board, may investigate any evidence that appears to show the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board may investigate any complaint that alleges the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board shall not act on its own motion or on a complaint received by the board if the allegation of unprofessional conduct, unethical conduct or any other violation of this chapter against a professional who holds an Arizona license occurred more than four years before the complaint is received by the board. The four-year time limitation does not apply to:

1. Medical malpractice settlements or judgments, allegations of sexual misconduct or an incident or occurrence that involved a felony, diversion of a controlled substance or impairment while practicing by the licensee.
2. The board's consideration of the specific unprofessional conduct related to the licensee's failure to disclose conduct or a violation as required by law.

B. At the request of the complainant, the board shall not disclose to the respondent the complainant name unless the information is essential to proceedings conducted pursuant to this article.

C. The board or its designees shall conduct necessary investigations, including interviews between representatives of the board and the licensee with respect to any information obtained by or filed with the board under subsection A of this section. The results of the investigation conducted by a designee shall be forwarded to the board for its review.

D. If, based on the information it receives under subsection A of this section, the board finds that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, the board may order a summary suspension of the respondent's license pursuant to section 41-1092.11 pending proceedings for revocation or other action.

E. If a complaint refers to quality of care, the patient may be referred for a clinical evaluation at the discretion of the board.

F. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is insufficient to merit disciplinary action against the licensee, the board may take any of the following actions:

1. Dismiss the complaint.
2. Issue a nondisciplinary letter of concern to the licensee.
3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.
4. Assess a nondisciplinary civil penalty in an amount not to exceed five hundred dollars if the complaint involves the licensee's failure to respond to a board subpoena.

G. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is sufficient to merit disciplinary action against the licensee, the board may request that the licensee participate in a formal interview before the board. If the licensee refuses or accepts the invitation for a formal interview and the results indicate that grounds may exist for revocation or suspension, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If, after completing a formal interview, the board finds that the protection of the public requires emergency action, it may order a summary suspension of the license pursuant to section 41-1092.11 pending formal revocation proceedings or other action authorized by this section.

H. If, after completing a formal interview, the board finds that the information provided under subsection A of this section is insufficient to merit suspension or revocation of the license, it may take any of the following actions:

1. Dismiss the complaint.
2. Order disciplinary action pursuant to section 32-1263.01, subsection A.
3. Enter into a consent agreement with the licensee for disciplinary action.
4. Order nondisciplinary continuing education pursuant to section 32-1263.01, subsection B.
5. Issue a nondisciplinary letter of concern to the licensee.

I. A copy of the board's order issued pursuant to this section shall be given to the complainant and to the licensee. Pursuant to title 41, chapter 6, article 10, the licensee may petition for rehearing or review.

J. Any person who in good faith makes a report or complaint as provided in this section to the board or to any person or committee acting on behalf of the board is not subject to liability for civil damages as a result of the report.

K. The board, through its president or the president's designee, may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony and receive exhibits in evidence in connection with an investigation initiated by the board or a complaint filed with the board. In case of disobedience to a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

L. Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, reports or oral statements relating to diagnostic findings or treatment of patients, any information from which a patient or a patient's family may be identified or information received and records kept by the board as a result of the investigation procedures taken pursuant to this chapter, are not available to the public.

M. The board may charge the costs of formal hearings conducted pursuant to title 41, chapter 6, article 10 to a licensee it finds to be in violation of this chapter.

N. The board may accept the surrender of an active license from a licensee who is subject to a board investigation and who admits in writing to any of the following:

1. Being unable to safely engage in the practice of dentistry.
2. Having committed an act of unprofessional conduct.
3. Having violated this chapter or a board rule.

O. In determining the appropriate disciplinary action under this section, the board may consider any previous nondisciplinary and disciplinary actions against a licensee.

P. If a licensee who is currently providing dental services for a registered business entity believes that the registered business entity has engaged in unethical conduct as defined pursuant to section 32-1263, subsection D, paragraph 16, the licensee must do both of the following before filing a complaint with the board:

1. Notify the registered business entity in writing that the licensee believes that the registered business entity has engaged in a policy or practice that interferes with the clinical judgment of the licensee or that compromises the licensee's ability to comply with the requirements of this chapter. The licensee shall specify in the notice the reasons for this belief.
2. Provide the registered business entity with at least ten calendar days to respond in writing to the assertions made pursuant to paragraph 1 of this subsection.

Q. A licensee who files a complaint pursuant to subsection P of this section shall provide the board with a copy of the licensee's notification and the registered business entity's response, if any.

R. A registered business entity may not take any adverse employment action against a licensee because the licensee complies with the requirements of subsection P of this section.

S. For the purposes of this section:

1. "License" includes a certificate issued pursuant to this chapter.
2. "Licensee" means a dentist, dental therapist, dental hygienist, denturist, dental consultant, restricted permit holder or business entity regulated pursuant to this chapter.

32-1263.03. Executive director; complaints; termination; review

A. If delegated by the board, the executive director, with the concurrence of the board's investigative staff, may terminate a complaint if the investigative staff's review indicates the complaint is without merit and that termination is appropriate.

B. The executive director may not terminate a complaint if a court has entered a medical malpractice judgment against a person licensed under this chapter.

C. At each regularly scheduled board meeting, the executive director shall provide to the board a list of each complaint the executive director terminated pursuant to subsection A since the preceding board meeting.

D. A person who is aggrieved by an action taken by the executive director pursuant to subsection A may file a written request that the board review that action. The request must be filed within thirty days after that person is notified of the executive director's action by personal delivery or, if the notification is mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the executive director's action. On review, the board shall approve, modify or reject the executive director's action.

32-1264. Maintenance of records

A. A person who is licensed or certified pursuant to this chapter shall make and maintain legible written records concerning all diagnoses, evaluations and treatments of each patient of record. A licensee or certificate holder shall maintain records that are stored or produced electronically in retrievable paper form. These records shall include:

1. All treatment notes, including current health history and clinical examinations.
2. Prescription and dispensing information, including all drugs, medicaments and dental materials used for patient care.
3. Diagnosis and treatment planning.
4. Dental and periodontal charting. Specialist charting must include areas of requested care and notation of visual oral examination describing any areas of potential pathology or radiographic irregularities.
5. All radiographs.

B. Records are available for review and for treatment purposes to the dentist, dental therapist, dental hygienist or denturist providing care.

C. On request, the licensee or certificate holder shall allow properly authorized board personnel to have access to the licensee's or certificate holder's place of practice to conduct an inspection and must make the licensee's or certificate holder's records, books and documents available to the board as part of an investigation process.

D. Within fifteen business days after a patient's written request, that patient's dentist, dental therapist, dental hygienist or denturist or a registered business entity shall transfer legible and diagnostic quality copies of that patient's records to another licensee or certificate holder or that patient. The patient may be charged for the reasonable costs of copying and forwarding these records. A dentist, dental therapist, dental hygienist, denturist or registered business entity may require that payment of reproduction costs be made in advance, unless the records are necessary for continuity of care, in which case the records shall not be withheld. Copies of records shall not be withheld because of an unpaid balance for dental services.

E. Unless otherwise required by law, a person who is licensed or certified pursuant to this chapter or a business entity that is registered pursuant to this chapter must retain the original or a copy of a patient's dental records as follows:

1. If the patient is an adult, for at least six years after the last date the adult patient received dental services from that provider.

2. If the patient is a child, for at least three years after the child's eighteenth birthday or for at least six years after the last date the child received dental services from the provider, whichever occurs later.

32-1265. [Interpretation of chapter](#)

Nothing in this chapter shall be construed to abridge a license issued under laws of this state relating to medicine or surgery.

32-1266. [Prosecution of violations](#)

The attorney general shall act for the board in all matters requiring legal assistance, but the board may employ other or additional counsel in its own behalf. The board shall assist prosecuting officers in enforcement of this chapter, and in so doing may engage suitable persons to assist in investigations and in the procurement and presentation of evidence. Subpoenas or other orders issued by the board may be served by any officer empowered to serve processes, who shall receive the fees prescribed by law. Expenditures made in carrying out provisions of this section shall be paid from the dental board fund.

32-1267. [Use of fraudulent instruments; classification](#)

A person is guilty of a class 5 felony who:

1. Knowingly presents to or files with the board as his own a diploma, degree, license, certificate or identification belonging to another, or which is forged or fraudulent.

2. Exhibits or displays any instrument described in paragraph 1 with intent that it be used as evidence of the right of such person to practice dentistry in this state.

3. With fraudulent intent alters any instrument described in paragraph 1 or uses or attempts to use it when so altered.

4. Sells, transfers or offers to sell or transfer, or who purchases, procures or offers to purchase or procure a diploma, license, certificate or identification, with intent that it be used as evidence of the right to practice dentistry in this state by a person other than the one to whom it belongs or is issued.

32-1268. Violations; classification; required proof

A. A person is guilty of a class 2 misdemeanor who:

1. Employs, contracts with, or by any means procures the assistance of, or association with, for the purpose of practicing dentistry, a person not having a valid license therefor.

2. Fails to obey a summons or other order regularly and properly issued by the board.

3. Violates any provision of this chapter for which the penalty is not specifically prescribed.

B. In a prosecution or hearing under this chapter, it is necessary to prove only a single act of violation and not a general course of conduct, and where the violation is continued over a period of one or more days each day constitutes a separate violation subject to the penalties prescribed in this chapter.

32-1269. Violation; classification; injunctive relief

A. A person convicted under this chapter is guilty of a class 2 misdemeanor unless another classification is specifically prescribed in this chapter. Violations shall be prosecuted by the county attorney and tried before the superior court in the county in which the violation occurs.

B. In addition to penalties provided in this chapter, the courts of the state are vested with jurisdiction to prevent and restrain violations of this chapter as nuisances per se, and the county attorneys shall, and the board may, institute proceedings in equity to prevent and restrain violations. A person damaged, or threatened with loss or injury, by reason of a violation of this chapter is entitled to obtain injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation of this chapter.

32-1270. Deceased or incapacitated dentists; notification

A. An administrator or executor of the estate of a deceased dentist, or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent, must notify the board within sixty days after the dentist's death or incapacitation. The administrator or executor may employ a licensed dentist for a period of not more than one year to:

1. Continue the deceased or incapacitated dentist's practice.

2. Conclude the affairs of the deceased or incapacitated dentist, including the sale of any assets.

B. An administrator or executor operating a practice pursuant to this section for more than one year must register as a business entity pursuant to section 32-1213.

[32-1271. Marking of dentures for identification; retention and release of information](#)

A. Every complete upper or lower denture fabricated by a licensed dentist, or fabricated pursuant to the dentist's work order, must be marked with the patient's name unless the patient objects. The marking must be done during fabrication and must be permanent, legible and cosmetically acceptable. The dentist or the dental laboratory shall determine the location of the marking and the methods used to implant or apply it. The dentist must inform the patient that the marking is used only to identify the patient, and the patient may choose which marking is to appear on the dentures.

B. The dentist must retain the records of marked dentures and may not release the records to any person except to law enforcement officers in any emergency that requires personal identification by means of dental records or to anyone authorized by the patient to receive this information.

Article 3.1 – Licensing and Regulation of Dental Therapists

[32-1276. Definitions](#)

In this article, unless the context otherwise requires:

1. "Applicant" means a person who is applying for licensure to practice dental therapy in this state.
2. "Direct supervision" means that a licensed dentist is present in the office and available to provide treatment or care to a patient and observe a dental therapist's work.
3. "Licensee" means a person who holds a license to practice dental therapy in this state.

[32-1276.01. Application for licensure; requirements; fingerprint clearance card; denial or suspension of application](#)

A. An applicant for licensure as a dental therapist in this state shall do all of the following:

1. Apply to the board on a form prescribed by the board.
2. Verify under oath that all statements in the application are true to the applicant's knowledge.
3. Enclose with the application:
 - (a) A recent photograph of the applicant.
 - (b) The application fee established by the board by rule.

B. The board may grant a license to practice dental therapy to an applicant who meets all of the following requirements:

1. Is licensed as a dental hygienist pursuant to article 4 of this chapter.
2. Graduates from a dental therapy education program that is accredited by or holds an initial accreditation from the American dental association commission on dental accreditation and that is offered through an accredited higher education institution recognized by the United States department of education.

3. Successfully passes both of the following:

(a) Within five years before filing the application, a clinical examination that is either:

(i) The western regional examining board examination.

(ii) An examination in dental therapy administered by another state or testing agency that is substantially equivalent to the western regional examining board examination, as determined by the state board of dental examiners.

(b) The Arizona dental jurisprudence examination.

4. Is not subject to any grounds for denial of the application under this chapter.

5. Obtains a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.

6. Meets all requirements for licensure established by the board by rule.

C. The board may deny an application for licensure or license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dental therapy revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently suspended or restricted by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental therapy instead of having disciplinary action taken against the applicant by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for licensure if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue a license or deny an application for licensure until the investigation is completed.

32-1276.02. Dental therapist triennial licensure; continuing education; license renewal and reinstatement; fees; civil penalties; retired and disabled license status

A. Except as provided in section 32-4301, a license issued under this article expires thirty days after the licensee's birthday every third year. On or before the licensee's birthday every third year, each licensed dental therapist shall submit to the board a complete renewal application and pay a license renewal fee established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dental therapist or to a dental therapist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the licensee's birthday of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birthday of the expiration year.

C. An applicant for a dental therapy license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birthday. This fee may not exceed one-third of the fee prescribed pursuant to subsection A of this section. Subsequent applications shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a \$100 penalty. When the license is issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this article.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a civil penalty of \$50 if a licensee fails to notify the board of the change within that time. The board shall increase the civil penalty to \$100 if a licensee fails to notify the board of the change within thirty days.

F. A licensee who is at least sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes by paying a reduced renewal fee as prescribed by the board by rule.

G. A licensee is not required to maintain a dental hygienist license.

32-1276.03. Practice of dental therapy; authorized procedures; supervision requirements; restrictions

A. A person is deemed to be a practicing dental therapist if the person does any of the acts or performs any operations included in the general practice of dental therapists or dental therapy or any related and associated duties.

B. Either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement, a licensed dental therapist may do any of the following:

1. Perform oral evaluations and assessments of dental disease and formulate individualized treatment plans.
2. Perform comprehensive charting of the oral cavity.
3. Provide oral health instruction and disease prevention education, including motivational interviewing, nutritional counseling and dietary analysis.
4. Expose and process dental radiographic images.
5. Perform dental prophylaxis, scaling, root planing and polishing procedures.
6. Dispense and administer oral and topical nonnarcotic analgesics and anti-inflammatory and antibiotic medications as prescribed by a licensed health care provider.
7. Apply topical preventive and prophylactic agents, including fluoride varnishes, antimicrobial agents, silver diamine fluoride and pit and fissure sealants.
8. Perform pulp vitality testing.
9. Apply desensitizing medicaments or resins.
10. Fabricate athletic mouth guards and soft occlusal guards.
11. Change periodontal dressings.
12. Administer nitrous oxide analgesics and local anesthetics.
13. Perform simple extraction of erupted primary teeth.
14. Perform nonsurgical extractions of periodontally diseased permanent teeth that exhibit plus three or grade three mobility and that are not impacted, fractured, unerupted or in need of sectioning for removal.
15. Perform emergency palliative treatments of dental pain that is related to care or a service described in this section.
16. Prepare and place direct restorations in primary and permanent teeth.

17. Fabricate and place single-tooth temporary crowns.
18. Prepare and place preformed crowns on primary teeth.
19. Perform indirect and direct pulp capping on permanent teeth.
20. Perform indirect pulp capping on primary teeth.
21. Perform suturing and suture removal.
22. Provide minor adjustments and repairs on removable prostheses.
23. Place and remove space maintainers.
24. Perform all functions of a dental assistant and expanded function dental assistant.
25. Perform other related services and functions that are authorized by the supervising dentist within the dental therapist's scope of practice and for which the dental therapist is trained.
26. Provide referrals.
27. Perform any other duties of a dental therapist that are authorized by the board by rule.

C. A dental therapist may not:

1. Dispense or administer a narcotic drug.
2. Independently bill for services to any individual or third-party payor.

D. A person may not claim to be a dental therapist unless that person is licensed as a dental therapist under this article.

[32-1276.04. Dental therapists; clinical practice; supervising dentists; written collaborative practice agreements](#)

A. A dental therapist may practice only in the following practice settings or locations, including mobile dental units, that are operated or served by any of the following:

1. A federally qualified community health center.
2. A health center program that has received a federal look-alike designation.
3. A community health center.
4. A nonprofit dental practice or a nonprofit organization that provides dental care to low-income and underserved individuals.

5. A private dental practice that provides dental care for community health center patients of record who are referred by the community health center.

B. A dental therapist may practice in this state either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement. Before a dental therapist may enter into a written collaborative practice agreement, the dental therapist shall complete one thousand hours of dental therapy clinical practice under the direct supervision of a dentist who is licensed in this state and shall provide documentation satisfactory to the board of having completed this requirement.

C. A practicing dentist who holds an active license pursuant to this chapter and a licensed dental therapist who holds an active license pursuant to this article may enter into a written collaborative practice agreement for the delivery of dental therapy services. The supervising dentist shall provide or arrange for another dentist or specialist to provide any service needed by the dental therapist's patient that exceeds the dental therapist's authorized scope of practice.

D. A dentist may not enter into more than four separate written collaborative practice agreements for the delivery of dental therapy services.

E. A written collaborative practice agreement between a dentist and a dental therapist shall do all of the following:

1. Address any limit on services and procedures to be performed by the dental therapist, including types of populations and any age-specific or procedure-specific practice protocol, including case selection criteria, assessment guidelines and imaging frequency.

2. Address any limit on practice settings established by the supervising dentist and the level of supervision required for various services or treatment settings.

3. Establish practice protocols, including protocols for informed consent, recordkeeping, managing medical emergencies and providing care to patients with complex medical conditions, including requirements for consultation before initiating care.

4. Establish protocols for quality assurance, administering and dispensing medications and supervising dental assistants.

5. Include specific protocols to govern situations in which the dental therapist encounters a patient requiring treatment that exceeds the dental therapist's authorized scope of practice or the limits imposed by the collaborative practice agreement.

6. Specify that the extraction of permanent teeth may be performed only under the direct supervision of a dentist and consistent with section 32-1276.03, subsection B, paragraph 14.

F. Except as provided in section 32-1276.03, subsection B, paragraph 14, to the extent authorized by the supervising dentist in the written collaborative practice agreement, a dental therapist may practice dental therapy procedures authorized under this article in a practice setting in which the supervising dentist is not on-site and has not previously examined the patient or rendered a diagnosis.

G. The written collaborative practice agreement must be signed and maintained by both the supervising dentist and the dental therapist and may be updated and amended as necessary by both

the supervising dentist and dental therapist. The supervising dentist and dental therapist shall submit a copy of the agreement and any amendment to the agreement to the board.

32-1276.05. Dental therapists; supervising dentists; collaborative practice relationships

A. A dentist who holds an active license pursuant to this chapter and a dental therapist who holds an active license pursuant to this article may enter into a collaborative practice relationship through a written collaborative practice agreement for the delivery of dental therapy services.

B. Each dental practice shall disclose to a patient whether the patient is scheduled to see the dentist or dental therapist.

C. Each dentist in a collaborative practice relationship shall:

1. Be available to provide appropriate contact, communication and consultation with the dental therapist.

2. Adopt procedures to provide timely referral of patients whom the dental therapist refers to a licensed dentist for examination. The dentist to whom the patient is referred shall be geographically available to see the patient.

D. Each dental therapist in a collaborative practice relationship shall:

1. Perform only those duties within the terms of the written collaborative practice agreement.

2. Maintain an appropriate level of contact with the supervising dentist.

E. The dental therapist and the supervising dentist shall notify the board of the beginning of the collaborative practice relationship and provide the board with a copy of the written collaborative practice agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The dental therapist and supervising dentist shall also notify the board within thirty days after the termination date of the written collaborative practice agreement if the date is different than the termination date provided in the agreement.

F. Subject to the terms of the written collaborative practice agreement, a dental therapist may perform all dental therapy procedures authorized in section 32-1276.03. The dentist's presence, examination, diagnosis and treatment plan are not required unless specified by the written collaborative practice agreement.

32-1276.06. Practicing without a license; violation; classification

It is a class 6 felony for a person to practice dental therapy in this state unless the person has obtained a license from the board as provided in this article.

32-1276.07. Licensure by credential; examination waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting the application for licensure pursuant to this article and the other state or testing agency maintains a standard of licensure or certification that is

substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall prescribe what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed or certified.

B. The applicant shall pay a licensure by credential fee as established by the board in rule.

C. An applicant under this section is not required to obtain a dental hygienist license in this state if the board determines that the applicant otherwise meets the requirements for dental therapist licensure.

32-1276.08. Dental therapy schools; credit for prior experience or coursework

Notwithstanding any other law, a recognized dental therapy school may grant advanced standing or credit for prior learning to a student who has prior experience or has completed coursework that the school determines is equivalent to didactic and clinical education in its accredited program.

Article 4 – Licensing and Regulation of Dental Hygienists

32-1281. Practicing as dental hygienist; supervision requirements; definitions

A. A person is deemed to be practicing as a dental hygienist if the person does any of the acts or performs any of the operations included in the general practice of dental hygienists, dental hygiene and all related and associated duties.

B. A licensed dental hygienist may perform the following:

1. Prophylaxis.

2. Scaling.

3. Closed subgingival curettage.

4. Root planing.

5. Administering local anesthetics and nitrous oxide.

6. Inspecting the oral cavity and surrounding structures for the purposes of gathering clinical data to facilitate a diagnosis.

7. Periodontal screening or assessment.

8. Recording clinical findings.

9. Compiling case histories.

10. Exposing and processing dental radiographs.

11. All functions authorized and deemed appropriate for dental assistants.

12. Except as provided in paragraph 13 of this subsection, those restorative functions permissible for an expanded function dental assistant if qualified pursuant to section 32-1291.01.

13. Placing interim therapeutic restorations after successfully completing a course at an institution accredited by the commission on dental accreditation of the American dental association.

C. The board by rule shall prescribe the circumstances under which a licensed dental hygienist may:

1. Apply preventive and therapeutic agents to the hard and soft tissues.

2. Use emerging scientific technology and prescribe the necessary training, experience and supervision to operate newly developed scientific technology. A dentist who supervises a dental hygienist whose duties include the use of emerging scientific technology must have training on using the emerging technology that is equal to or greater than the training the dental hygienist is required to obtain.

3. Perform other procedures not specifically authorized by this section.

D. Except as provided in subsections E, F and I of this section, a dental hygienist shall practice under the general supervision of a dentist who is licensed pursuant to this chapter.

E. A dental hygienist may practice under the general supervision of a physician who is licensed pursuant to chapter 13 or 17 of this title in an inpatient hospital setting.

F. A dental hygienist may perform the following procedures on meeting the following criteria and under the following conditions:

1. Administering local anesthetics under the direct supervision of a dentist who is licensed pursuant to this chapter after:

(a) The dental hygienist successfully completes a course in administering local anesthetics that includes didactic and clinical components in both block and infiltration techniques offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

(b) The dental hygienist successfully completes an examination in local anesthesia given by the western regional examining board or a written and clinical examination of another state or regional examination that is substantially equivalent to the requirements of this state, as determined by the board.

(c) The board issues to the dental hygienist a local anesthesia certificate on receipt of proof that the requirements of subdivisions (a) and (b) of this paragraph have been met.

2. Administering local anesthetics under general supervision to a patient of record if all of the following are true:

- (a) The dental hygienist holds a local anesthesia certificate issued by the board.
- (b) The patient is at least eighteen years of age.
- (c) The patient has been examined by a dentist who is licensed pursuant to this chapter within the previous twelve months.
- (d) There has been no change in the patient's medical history since the last examination. If there has been a change in the patient's medical history within that time, the dental hygienist must consult with the dentist before administering local anesthetics.
- (e) The supervising dentist who performed the examination has approved the patient for being administered local anesthetics by the dental hygienist under general supervision and has documented this approval in the patient's record.

3. Administering nitrous oxide analgesia under the direct supervision of a dentist who is licensed pursuant to this chapter after:

- (a) The dental hygienist successfully completes a course in administering nitrous oxide analgesia that includes didactic and clinical components offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.
- (b) The board issues to the dental hygienist a nitrous oxide analgesia certificate on receipt of proof that the requirements of subdivision (a) of this paragraph have been met.

G. The board may issue local anesthesia and nitrous oxide analgesia certificates to a licensed dental hygienist on receipt of evidence satisfactory to the board that the dental hygienist holds a valid certificate or credential in good standing in the respective procedure issued by a licensing board of another jurisdiction of the United States.

H. A dental hygienist may perform dental hygiene procedures in the following settings:

- 1. On a patient of record of a dentist within that dentist's office.
- 2. Except as prescribed in section 32-1289.01, in a health care facility, long-term care facility, public health agency or institution, public or private school or homebound setting on patients who have been examined by a dentist within the previous year.
- 3. In an inpatient hospital setting pursuant to subsection E of this section.

I. A dental hygienist may provide dental hygiene services under an affiliated practice relationship with a dentist as prescribed in section 32-1289.01.

J. For the purposes of this article:

- 1. "Assessment" means a limited, clinical inspection that is performed to identify possible signs of oral or systemic disease, malformation or injury and the potential need for referral for diagnosis and treatment, and may include collecting clinical information to facilitate an examination, diagnosis and treatment plan by a dentist.

2. "Direct supervision" means that the dentist is present in the office while the dental hygienist is treating a patient and is available for consultation regarding procedures that the dentist authorizes and for which the dentist is responsible.

3. "General supervision" means:

(a) That the dentist is available for consultation, whether or not the dentist is in the dentist's office, over procedures that the dentist has authorized and for which the dentist remains responsible.

(b) With respect to an inpatient hospital setting, that a physician who is licensed pursuant to chapter 13 or 17 of this title is available for consultation, whether or not the physician is physically present at the hospital.

4. "Interim therapeutic restoration" means a provisional restoration that is placed to stabilize a primary or permanent tooth and that consists of removing soft material from the tooth using only hand instrumentation, without using rotary instrumentation, and subsequently placing an adhesive restorative material.

5. "Screening" means determining an individual's need to be seen by a dentist for diagnosis and does not include an examination, diagnosis or treatment planning.

32-1282. Administration and enforcement

A. So far as applicable, the board shall have the same powers and duties in administering and enforcing this article that it has under section 32-1207 in administering and enforcing articles 1, 2 and 3 of this chapter.

B. The board shall adopt rules that provide a method for the board to receive the assistance and advice of dental hygienists licensed pursuant to this chapter in all matters relating to the regulation of dental hygienists.

32-1283. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, fines and other revenues received by the board under this article.

32-1284. Qualifications of applicant; application; fee; fingerprint clearance card; rules; denial or suspension of application

A. An applicant for licensure as a dental hygienist shall be at least eighteen years of age, shall be of good moral character, shall meet the requirements of section 32-1285 and shall present to the board evidence of graduation or a certificate of satisfactory completion in a course or curriculum in dental hygiene from a recognized dental hygiene school. A candidate shall make written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of one hundred dollars. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board shall adopt rules that govern the practice of dental hygienists and that are not inconsistent with this chapter.

C. The board may deny an application for licensure or an application for license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.
2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.
3. Knowingly made any false statement in the application.
4. Has had a license to practice dental hygiene revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
5. Is currently under suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1285. [Applicants for licensure; examination requirements](#)

An applicant for licensure shall have passed all of the following:

1. The national dental hygiene board examination.
2. A clinical examination that is completed within five years preceding filing the application and that is either of the following:
 - (a) The western regional examining board examination.
 - (b) An examination administered by another state or testing agency that is substantially equivalent to the requirements of this state, as determined by the board.
3. The Arizona dental jurisprudence examination.

32-1286. [Recognized dental hygiene schools; credit for prior learning](#)

Notwithstanding any law to the contrary, a recognized dental hygiene school may grant advanced standing or credit for prior learning to a student who has prior experience or course work that the school determines is equivalent to didactic and clinical education in its accredited program.

[32-1287. Dental hygienist triennial licensure; continuing education; license reinstatement; notice of change of address; penalties; retired and disabled license status](#)

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birthday every third year. On or before the licensee's birthday every third year, every licensed dental hygienist shall submit to the board a complete renewal application and pay a license renewal fee of not more than \$325, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this section does not apply to a retired hygienist or a hygienist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the licensee's birthday of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birthday of the expiration year.

C. A person applying for a license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birthday. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent registrations shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a \$100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a penalty of \$50 if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to \$100 if a licensee fails to notify it of the change within thirty days.

F. A licensee who is over sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

[32-1288. Practicing without license; classification](#)

It is a class 1 misdemeanor for a person to practice dental hygiene in this state unless the person has obtained a license from the board as provided in this article.

32-1289. Employment of dental hygienist by public agency, institution or school

A. A public health agency or institution or a public or private school authority may employ dental hygienists to perform necessary dental hygiene procedures under either direct or general supervision pursuant to section 32-1281.

B. A dental hygienist employed by or working under contract or as a volunteer for a public health agency or institution or a public or private school authority before an examination by a dentist may perform a screening or assessment and apply sealants and topical fluoride.

32-1289.01. Dental hygienists; affiliated practice relationships; rules; definition

A. A dentist who holds an active license pursuant to this chapter and a dental hygienist who holds an active license pursuant to this article may enter into an affiliated practice relationship to deliver dental hygiene services.

B. A dental hygienist shall satisfy all of the following to be eligible to enter into an affiliated practice relationship with a dentist pursuant to this section to deliver dental hygiene services in an affiliated practice relationship:

1. Hold an active license in good standing pursuant to this article.
2. Enter into an affiliated practice relationship with a dentist who holds an active license pursuant to this chapter.
3. Be actively engaged in dental hygiene practice for at least five hundred hours in each of the two years immediately preceding the affiliated practice relationship.

C. An affiliated practice agreement between a dental hygienist and a dentist shall be in writing and:

1. Shall identify at least the following:

(a) The affiliated practice settings in which the dental hygienist may deliver services pursuant to the affiliated practice relationship.

(b) The services to be provided and any procedures and standing orders the dental hygienist must follow. The standing orders shall include the circumstances in which a patient may be seen by the dental hygienist.

(c) The conditions under which the dental hygienist may administer local anesthesia and provide root planing.

(d) Circumstances under which the affiliated practice dental hygienist must consult with the affiliated practice dentist before initiating further treatment on patients who have not been seen by a dentist within twelve months after the initial treatment by the affiliated practice dental hygienist.

2. May include protocols for supervising dental assistants.

D. The following requirements apply to all dental hygiene services provided through an affiliated practice relationship:

1. Patients who have been assessed by the affiliated practice dental hygienist shall be directed to the affiliated practice dentist for diagnosis, treatment or planning that is outside the dental hygienist's scope of practice, and the affiliated practice dentist may make any necessary referrals to other dentists.
2. The affiliated practice dental hygienist shall consult with the affiliated practice dentist if the proposed treatment is outside the scope of the agreement.
3. The affiliated practice dental hygienist shall consult with the affiliated practice dentist before initiating treatment on patients presenting with a complex medical history or medication regimen.
4. The patient shall be informed in writing that the dental hygienist providing the care is a licensed dental hygienist and that the care does not take the place of a diagnosis or treatment plan by a dentist.

E. A contract for dental hygiene services with licensees who have entered into an affiliated practice relationship pursuant to this section may be entered into only by:

1. A health care organization or facility.
2. A long-term care facility.
3. A public health agency or institution.
4. A public or private school authority.
5. A government-sponsored program.
6. A private nonprofit or charitable organization.
7. A social service organization or program.

F. An affiliated practice dental hygienist may not provide dental hygiene services in a setting that is not listed in subsection E of this section.

G. Each dentist in an affiliated practice relationship shall:

1. Be available to provide an appropriate level of contact, communication and consultation with the affiliated practice dental hygienist during the business hours of the affiliated practice dental hygienist.
2. Adopt standing orders applicable to dental hygiene procedures that may be performed and populations that may be treated by the affiliated practice dental hygienist under the terms of the applicable affiliated practice agreement and to be followed by the affiliated practice dental hygienist in each affiliated practice setting in which the affiliated practice dental hygienist performs dental hygiene services under the affiliated practice relationship.

3. Adopt procedures to provide timely referral of patients referred by the affiliated practice dental hygienist to a licensed dentist for examination and treatment planning. If the examination and treatment planning is to be provided by the dentist, that treatment shall be scheduled in an appropriate time frame. The affiliated practice dentist or the dentist to whom the patient is referred shall be geographically available to see the patient.

4. Not permit the provision of dental hygiene services by more than six affiliated practice dental hygienists at any one time.

H. Each affiliated practice dental hygienist, when practicing under an affiliated practice relationship:

1. May perform only those duties within the terms of the affiliated practice relationship.

2. Shall maintain an appropriate level of contact, communication and consultation with the affiliated practice dentist.

3. Is responsible and liable for all services rendered by the affiliated practice dental hygienist under the affiliated practice relationship.

I. The affiliated practice dental hygienist and the affiliated practice dentist shall notify the board of the beginning of the affiliated practice relationship and provide the board with a copy of the agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The affiliated practice dental hygienist and the affiliated practice dentist shall also notify the board within thirty days after the termination date of the affiliated practice relationship if this date is different than the agreement termination date.

J. Subject to the terms of the written affiliated practice agreement entered into between a dentist and a dental hygienist, a dental hygienist may:

1. Perform all dental hygiene procedures authorized by this chapter, except for performing any diagnostic procedures that are required to be performed by a dentist and administering nitrous oxide. The dentist's presence and an examination, diagnosis and treatment plan are not required unless specified by the affiliated practice agreement.

2. Supervise dental assistants, including dental assistants who are certified to perform functions pursuant to section 32-1291.

K. The board shall adopt rules regarding participation in affiliated practice relationships by dentists and dental hygienists that specify the following:

1. Additional continuing education requirements that must be satisfied by a dental hygienist.

2. Additional standards and conditions that may apply to affiliated practice relationships.

3. Compliance with the dental practice act and rules adopted by the board.

L. For the purposes of this section, "affiliated practice relationship" means the delivery of dental hygiene services, pursuant to an agreement, by a dental hygienist who is licensed pursuant to this article and who refers the patient to a dentist who is licensed pursuant to this chapter for any necessary further diagnosis, treatment and restorative care.

32-1290. Grounds for censure, probation, suspension or revocation of license; procedure

After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any such person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

32-1291. Dental assistants; regulation; duties

A. A dental assistant may expose radiographs for dental diagnostic purposes under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

B. A dental assistant may polish the natural and restored surfaces of the teeth under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

32-1291.01. Expanded function dental assistants; training and examination requirements; duties

A. A dental assistant may perform expanded functions after meeting one of the following:

1. Successfully completing a board-approved expanded function dental assistant training program at an institution accredited by the American dental association commission on dental accreditation and on successfully completing examinations in dental assistant expanded functions approved by the board.

2. Providing both:

(a) Evidence of currently holding or having held within the preceding ten years a license, registration, permit or certificate in expanded functions in restorative procedures issued by another state or jurisdiction in the United States.

(b) Proof acceptable to the board of clinical experience in the expanded functions listed in subsection B of this section.

B. Expanded functions include the placement, contouring and finishing of direct restorations or the placement and cementation of prefabricated crowns following the preparation of the tooth by a licensed dentist. The restorative materials used shall be determined by the dentist.

C. An expanded function dental assistant may place interim therapeutic restorations under the general supervision and direction of a licensed dentist following a consultation conducted through teledentistry.

D. An expanded function dental assistant may apply sealants and fluoride varnish under the general supervision and direction of a licensed dentist.

E. A licensed dental hygienist may engage in expanded functions pursuant to section 32-1281, subsection B, paragraph 12 following a course of study and examination equivalent to that required for an expanded function dental assistant as specified by the board.

32-1292. Restricted permits; suspension; expiration; renewal

A. The board may issue a restricted permit to practice dental hygiene to an applicant who:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental hygiene services without compensation or at a rate that reimburses the clinic only for dental supplies and overhead costs and the applicant will not receive compensation for dental hygiene services provided at the clinic or organization.
2. Has a license to practice dental hygiene issued by a regulatory jurisdiction in the United States.
3. Has been actively engaged in the practice of dental hygiene for three years immediately preceding the application.
4. Is, to the board's satisfaction, competent to practice dental hygiene.
5. Meets the requirements of section 32-1284, subsection A that do not relate to examination.

B. A person who holds a restricted permit issued by the board may practice dental hygiene only in the course of the person's employment by a recognized charitable dental clinic or organization approved by the board.

C. The applicant for a restricted permit must file a copy of the person's employment contract with the board that includes a statement signed by the applicant that the applicant:

1. Understands that if that person's employment is terminated before the restricted permit expires, the permit is automatically revoked and that person must voluntarily surrender the permit to the board and is no longer eligible to practice unless that person meets the requirements of sections 32-1284 and 32-1285 or passes the examination required in this article.
2. Must be employed without compensation by a dental clinic or organization that is operated for a charitable purpose.
3. Is subject to the provisions of this chapter that apply to the regulation of dental hygienists.

D. The board may deny an application for a restricted permit if the applicant:

1. Has committed an act that is a cause for disciplinary action pursuant to this chapter.
2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required pursuant to this chapter.
3. Knowingly made a false statement in the application.
4. Has had a license to practice dental hygiene revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

E. The board shall suspend an application for a restricted permit or an application for restricted permit renewal if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a restricted permit to the applicant until the investigation is resolved.

F. A restricted permit expires either one year after the date of issue or June 30, whichever date first occurs. The board may renew a restricted permit for terms that do not exceed one year.

32-1292.01. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than one thousand dollars as prescribed by the board.

Article 5 – Certification and Regulation of Denturists

32-1293. Practicing as denturist; denture technology; dental laboratory technician

A. Notwithstanding the provisions of section 32-1202, nothing in this chapter shall be construed to prohibit a denturist certified pursuant to the provisions of this article from practicing denture technology.

B. A person is deemed to be practicing denture technology who:

1. Takes impressions and bite registrations for the purpose of or with a view to the making, producing, reproducing, construction, finishing, supplying, altering or repairing of complete upper or lower prosthetic dentures, or both, or removable partial dentures for the replacement of missing teeth.

2. Fits or advertises, offers, agrees, or attempts to fit any complete upper or lower prosthetic denture, or both, or adjusts or alters the fit of any full prosthetic denture, or fits or adjusts or alters the fit of removable partial dentures for the replacement of missing teeth.

C. In addition to the practices described in subsection B of this section, a person certified to practice denture technology may also construct, repair, reline, reproduce or duplicate full or partial prosthetic dentures or otherwise engage in the activities of a dental laboratory technician.

D. No person may perform an act described in subsection B of this section except a licensed dentist, a holder of a restricted permit pursuant to section 32-1238, a certified denturist or auxiliary personnel authorized to perform any such act by rule or regulation of the board pursuant to section 32-1207, subsection A, paragraph 1.

32-1294. Supervision by dentist; definitions; mouth preparation by dentist; liability; business association

A. A denturist may practice only in the office of a licensed dentist, denominated as such.

B. All work by a denturist shall be performed under the general supervision of a licensed dentist. For the purposes of this section, "general supervision" means the dentist is available for consultation in person or by phone during the performance of the procedures by a denturist pursuant to section 32-1293, subsection B. The dentist shall examine the patient initially, check the completed denture as to fit, form and function and perform such other procedures as the board may specify by rule or regulation. For the purposes of this section "completed denture" means a relined, rebased, duplicated or repaired denture or a new denture. Both the dentist and the denturist shall certify that the dentist has performed the initial examination and the final fitting as required in this subsection, and retain the certification in the patient's file.

C. When taking impressions or bite registrations for the purpose of constructing removable partial dentures or when checking the fit of a partial denture, all mouth preparation must be done by the dentist. The denturist is specifically prohibited from performing any cutting or surgery on hard or soft tissue in the mouth. By rule and regulation the board may further regulate the practice of the denturist in regard to removable partial dentures.

D. No more than two denturists may perform their professional duties under a dentist's general supervision at any one time.

E. A licensed dentist supervising a denturist shall be personally liable for any consequences arising from the performance of the denturist's duties.

F. A certified denturist and the dentist supervising his work may make any lawful agreement between themselves regarding fees, compensation and business association.

G. Any sign, advertisement or other notice displaying the name of the office must include the name of the responsible dentist.

32-1295. Board of dental examiners; additional powers and duties

A. In addition to other powers and duties prescribed by this chapter, the board shall:

1. As far as applicable, exercise the same powers and duties in administering and enforcing this article as it exercises under section 32-1207 in administering and enforcing other articles of this chapter.

2. Determine the eligibility of applicants for certification and issue certificates to applicants who it determines are qualified for certification.

3. Investigate charges of misconduct on the part of certified denturists.

4. Issue decrees of censure, fix periods and terms of probation, suspend or revoke certificates as the facts may warrant and reinstate certificates in proper cases.

B. The board may:

1. Adopt rules prescribing requirements for continuing education for renewal of all certificates issued pursuant to this article.

2. Hire consultants to assist the board in the performance of its duties.

C. In all matters relating to discipline and certifying of denturists and the approval of examinations, the board, by rule, shall provide for receiving the assistance and advice of denturists who have been previously certified pursuant to this chapter.

32-1296. Qualifications of applicant

A. To be eligible for certification to practice denture technology an applicant shall:

1. Be of good moral character.

2. Hold a high school diploma or its equivalent.

3. Present to the board evidence of graduation from a recognized denturist school or a certificate of satisfactory completion of a course or curriculum in denture technology from a recognized denturist school.

4. Pass a board approved examination.

B. A candidate for certification shall submit a written application to the board that includes a nonrefundable Arizona dental jurisprudence examination fee as prescribed by the board.

32-1297.01. Application for certification; fingerprint clearance card; denial; suspension

A. Each applicant for certification shall submit a written application to the board accompanied by a nonrefundable jurisprudence examination fee and obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board may deny an application for certification or for certification renewal if the applicant:

1. Has committed any act that would be cause for censure, probation, suspension or revocation of a certificate under this chapter.

2. Has knowingly made any false statement in the application.

3. While uncertified, has committed or aided and abetted the commission of any act for which a certificate is required under this chapter.

4. Has had a certificate to practice denture technology revoked by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a certificate to practice denture technology in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

C. The board shall suspend an application for certification if the applicant is currently under investigation by a denturist regulatory board in another jurisdiction. The board shall not issue or deny certification to the applicant until the investigation is resolved.

32-1297.03. Qualification for reexamination

An applicant for examination who has previously failed two or more examinations, as a condition of eligibility to take any further examination, shall furnish to the board satisfactory evidence of having successfully completed additional training in a recognized denturist school or refresher courses approved by the board or the board's testing agency.

32-1297.04. Fees

The board shall establish and collect fees, not to exceed the following amounts:

1. For an examination in jurisprudence, two hundred fifty dollars.
2. For each replacement or duplicate certificate, twenty-five dollars.

32-1297.05. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, penalties and other revenues received by the board under this article.

32-1297.06. Denturist certification; continuing education; certificate reinstatement; certificate for each place of practice; notice of change of address or place of practice; penalties

A. Except as provided in section 32-4301, a certification expires thirty days after the certificate holder's birthday every third year. On or before the certificate holder's birthday every third year, every certified denturist shall submit to the board a complete renewal application and shall pay a certificate renewal fee of not more than \$300, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a certificate

holder at the time of certification renewal. This requirement does not apply to a retired denturist or to a denturist with a disability.

B. A certificate holder shall include a written affidavit with the renewal application that affirms that the certificate holder complies with board rules relating to continuing education requirements. A certificate holder is not required to complete the written affidavit if the certificate holder received an initial certification within the year immediately preceding the expiration date of the certificate or the certificate holder is in disabled status. If the certificate holder is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the certificate holder includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the certificate holder's birthday of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the certificate expires thirty days after the certificate holder's birthday of the expiration year.

C. A person applying for a certificate for the first time in this state shall pay a prorated fee for the period remaining until the certificate holder's next birthday. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent certifications shall be conducted pursuant to this section.

D. An expired certificate may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the certificate with payment of the renewal fee and a \$100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to certification only for the remainder of the applicable three-year period. If a person does not reinstate a certificate pursuant to this subsection, the person must reapply for certification pursuant to this chapter.

E. Each certificate holder must provide to the board in writing both of the following:

1. A primary mailing address.
2. The address for each place of practice.

F. A certificate holder maintaining more than one place of practice shall obtain from the board a duplicate certificate for each office. The board shall set and charge a fee for each duplicate certificate. A certificate holder shall notify the board in writing within ten days after opening an additional place of practice.

G. A certificate holder shall notify the board in writing within ten days after changing a primary mailing address or place of practice address listed with the board. The board shall impose a \$50 penalty if a certificate holder fails to notify the board of the change within that time. The board shall increase the penalty imposed to \$100 if a certificate holder fails to notify it of the change within thirty days.

32-1297.07. Discipline; procedure

A. After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

B. The board on its own motion may investigate any evidence which appears to show the existence of any of the causes set forth in section 32-1263. The board shall investigate the report under oath of any person which appears to show the existence of any of the causes set forth in section 32-1263. Any person reporting pursuant to this section who provides the information in good faith shall not be subject to liability for civil damages as a result.

C. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

32-1297.08. Injunction

A. An injunction shall issue to enjoin the practice of denture technology by any of the following:

1. One neither certified to practice as a denturist nor licensed to practice as a dentist.
2. One certified as a denturist from practicing without proper supervision by a dentist as required by this article.
3. A denturist whose continued practice will or might cause irreparable damage to the public health and safety prior to the time proceedings pursuant to section 32-1297.07 could be instituted and completed.

B. A petition for injunction shall be filed by the board in the superior court for Maricopa county or in the county where the defendant resides or is found. Any citizen is also entitled to obtain injunctive relief in any court of competent jurisdiction because of the threat of injury to the public health and welfare.

C. Issuance of an injunction shall not relieve the respondent from being subject to any other proceedings provided for by law.

32-1297.09. Violations; classification

A person is guilty of a class 2 misdemeanor who:

1. Not licensed as a dentist, practices denture technology without certification as provided by this article.
2. Exhibits or displays a certificate, diploma, degree or identification of another or a forged or fraudulent certificate, diploma, degree or identification with the intent that it be used as evidence of the right of such person to practice as a denturist in this state.
3. Fails to obey a summons or other order regularly and properly issued by the board.
4. Is a licensed dentist responsible for a denturist under this article who fails to personally supervise the work of the denturist.

Article 6 – Dispensing of Drugs and Devices

32-1298. Dispensing of drugs and devices; conditions; civil penalty; definition

A. A dentist may dispense drugs, except schedule II controlled substances that are opioids, and devices kept by the dentist if:

1. All drugs are dispensed in packages labeled with the following information:

(a) The dispensing dentist's name, address and telephone number.

(b) The date the drug is dispensed.

(c) The patient's name.

(d) The name and strength of the drug, directions for its use and any cautionary statements.

2. The dispensing dentist enters into the patient's dental record the name and strength of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

3. The dispensing dentist keeps all drugs in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.

B. Except in an emergency situation, a dentist who dispenses drugs for a profit without being registered by the board to do so is subject to a civil penalty by the board of not less than three hundred dollars and not more than one thousand dollars for each transaction and is prohibited from further dispensing for a period of time as prescribed by the board.

C. Before dispensing a drug pursuant to this section, the patient shall be given a written prescription on which appears the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

D. A dentist shall dispense for profit only to the dentist's own patient and only for conditions being treated by that dentist. The dentist shall provide direct supervision of an attendant involved in the dispensing process. For the purposes of this subsection, "direct supervision" means that a dentist is present and makes the determination as to the legitimacy or advisability of the drugs or devices to be dispensed.

E. This section shall be enforced by the board, which shall establish rules regarding labeling, recordkeeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to ensure compliance with this section and applicable rules.

F. For the purposes of this section, "dispense" means the delivery by a dentist of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

Article 7 – Rehabilitation

32-1299. Substance abuse treatment and rehabilitation program; private contract; funding; confidential stipulation agreement

A. The board may establish a confidential program for the treatment and rehabilitation of dentists, dental therapists, denturists and dental hygienists who are impaired by alcohol or drug abuse. This program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. The board may contract with other organizations to operate the program established pursuant to this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.
2. Release to the board on demand of all treatment records.
3. Periodic reports to the board regarding each dentist's, dental therapist's, denturist's or dental hygienist's diagnosis and prognosis and recommendations for continuing care, treatment and supervision.
4. Immediate reporting to the board of the name of an impaired practitioner whom the treating organization believes to be a danger to self or others.
5. Immediate reporting to the board of the name of a practitioner who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.

C. The board may allocate an amount of not more than twenty dollars annually or sixty dollars triennially from each fee it collects from the renewal of active licenses for the operation of the program established by this section.

D. A dentist, dental therapist, denturist or hygienist who, in the opinion of the board, is impaired by alcohol or drug abuse shall agree to enter into a confidential nondisciplinary stipulation agreement with the board. The board shall place a licensee or certificate holder on probation if the licensee or certificate holder refuses to enter into a stipulation agreement with the board and may take other action as provided by law. The board may also refuse to issue a license or certificate to an applicant if the applicant refuses to enter into a stipulation agreement with the board.

E. In the case of a licensee or certificate holder who is impaired by alcohol or drug abuse after completing a second monitoring program pursuant to a stipulation agreement under subsection D of this section, the board shall determine whether:

1. To refer the matter for a formal hearing for the purpose of suspending or revoking the license or certificate.
2. The licensee or certificate holder should be placed on probation for a minimum of one year with restrictions necessary to ensure public safety.
3. To enter into another stipulation agreement under subsection D of this section with the licensee or certificate holder.

Article 8 – Mobile Dental Facilities and Portable Dental Units

32-1299.21. Definitions

In this article, unless the context otherwise requires:

1. "Mobile dental facility" means a facility in which dentistry is practiced and that is routinely towed, moved or transported from one location to another.
2. "Permit holder" means a dentist, dental hygienist, denturist or registered business entity that is authorized by this chapter to offer dental services in this state or a nonprofit organization, school district or school or institution of higher education that may employ a licensee to provide dental services and that is authorized by this article to operate a mobile dental facility or portable dental unit.
3. "Portable dental unit" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and used on a temporary basis at an out-of-office location.

32-1299.22. Mobile dental facilities; portable dental units; permits; exceptions

A. Beginning January 1, 2012, every mobile dental facility and, except as provided in subsection B, every provider, program or entity using portable dental units in this state must obtain a permit pursuant to this article.

B. A licensee who does not hold a permit for a mobile dental facility or portable dental unit may provide dental services if:

1. Occasional services are provided to a patient of record of a fixed dental office who is treated outside of the dental office.
2. Services are provided by a federal, state or local government agency.
3. Occasional services are performed outside of the licensee's office without charge to a patient or a third party.
4. Services are provided to a patient by an accredited dental or dental hygiene school.
5. The licensee holds a valid permit to provide mobile dental anesthesia services.
6. The licensee is an affiliated practice dental hygienist.

32-1299.23. Permit application; fees; renewal; notification of changes

A. An individual or entity that seeks a permit to operate a mobile dental facility or portable dental unit must submit an application on a form provided by the board and pay an annual registration fee prescribed by the board by rule. The permit must be renewed annually not later than the last day of the month in which the permit was issued. Permits not renewed by the expiration date are subject to a late fee as prescribed by the board by rule.

B. A permit holder shall notify the board of any change in address or contact person within ten days after that change. The board shall impose a penalty as prescribed by the board by rule if the permit holder fails to notify the board of that change within that time.

C. If ownership of the mobile dental facility or portable dental unit changes, the prior permit is invalid and a new permit application must be submitted.

32-1299.24. Standards of operation and practice

A. A permit holder must:

1. Comply with all applicable federal, state and local laws, regulations and ordinances dealing with radiographic equipment, flammability, sanitation, zoning and construction standards, including construction standards relating to required access for persons with disabilities.

2. Establish written protocols for follow-up care for patients who are treated in a mobile dental facility or through a portable dental unit. The protocols must include referrals for treatment in a dental office that is permanently established within a reasonable geographic area and may include follow-up care by the mobile dental facility or portable dental unit.

3. Ensure that each mobile dental facility or portable dental unit has access to communication equipment that will enable dental personnel to contact appropriate assistance in an emergency.

4. Identify a person who is licensed pursuant to this chapter, who is responsible to supervise treatment and who, if required by law, will be present when dental services are rendered. This paragraph does not prevent supervision by a dentist providing services or supervision pursuant to the exceptions prescribed in section 32-1231.

5. Display in or on the mobile dental facility or portable dental unit a current valid permit issued pursuant to this article in a manner that is readily observable by patients or visitors.

6. Provide a means of communication during and after business hours to enable the patient or the parent or guardian of a patient to contact the permit holder of the mobile dental facility or portable dental unit for emergency care, follow-up care or information about treatment received.

7. Comply with all requirements for maintenance of records pursuant to section 32-1264 and all other statutory requirements applicable to health care providers and patient records. All records, whether in paper or electronic form, if not in transit, must be maintained in a permanent, secure facility. Records of prior treatment must be readily available during subsequent treatment visits whenever practicable.

8. Ensure that all dentists, dental hygienists and denturists working in the mobile dental facility or portable dental unit hold a valid, current license issued by the board and that all delegated duties are within their respective scopes of practice as prescribed by the applicable laws of this state.

9. Maintain a written or electronic record detailing each location where services are provided, including:

(a) The street address of the service location.

(b) The dates of each session.

(c) The number of patients served.

(d) The types of dental services provided and the quantity of each service provided.

10. Provide to the board or its representative within ten days after a request for a record the written or electronic record required pursuant to paragraph 9 of this subsection.

11. Comply with current recommended infection control practices for dentistry as published by the national centers for disease control and prevention and as adopted by the board.

B. A mobile dental facility or portable dental unit must:

1. Contain equipment and supplies that are appropriate to the scope and level of treatment provided.

2. Have ready access to an adequate supply of potable water.

C. A permit holder or licensee who fails to comply with applicable statutes and rules governing the practice of dentistry, dental hygiene and denturism, the requirements for registered business entities or the requirements of this article is subject to disciplinary action for unethical or unprofessional conduct, as applicable.

32-1299.25. Informed consent; information for patients

A. The permit holder of a mobile dental facility or portable dental unit must obtain appropriate informed consent, in writing or by verbal communication, that is recorded by an electronic or digital device from the patient or the parent or guardian of the patient authorizing specific treatment before it is performed. The signed consent form or verbal communication shall be maintained as part of the patient's record as required in section 32-1264.

B. If services are provided to a minor, the signed consent form or verbal communication must inform the parent or guardian that the treatment of the minor by the mobile dental facility or portable dental unit may affect future benefits the minor may receive under private insurance, the Arizona health care cost containment system or the children's health insurance program.

C. At the conclusion of each patient's visit, the permit holder of a mobile dental facility or portable dental unit shall provide each patient with an information sheet that must contain:

1. Pertinent contact information as required by this section.

2. The name of the dentist or dental hygienist, or both, who provided services.

3. A description of the treatment rendered, including billed service codes, fees associated with treatment and tooth numbers if appropriate.

4. If necessary, referral information to another dentist as required by this article.

D. If the patient or the minor patient's parent or guardian has provided written consent to an institutional facility to access the patient's dental health records, the permit holder shall provide the institution with a copy of the information sheet provided in subsection C.

32-1299.26. Disciplinary actions; cessation of operation

A. A permit holder for a mobile dental facility or portable dental unit that provides dental services to a patient shall refer the patient for follow-up treatment with a licensed dentist or the permit holder if treatment is clinically indicated. A permit holder or licensee who fails to comply with this subsection commits an act of unprofessional conduct or unethical conduct and is subject to disciplinary action pursuant to section 32-1263, subsection A, paragraph 1 or subsection C.

B. The board may do any of the following pursuant to its disciplinary procedures if a mobile dental facility or portable dental unit violates any statute or board rule:

1. Refuse to issue a permit.
2. Suspend or revoke a permit.
3. Impose a civil penalty of not more than two thousand dollars for each violation.

C. If a mobile dental facility or portable dental unit ceases operations, the permit holder must notify the board within thirty days after the last day of operation and must report on the disposition of patient records and charts. In accordance with applicable laws and rules, the permit holder must also notify all active patients of the disposition of records and make reasonable arrangements for the transfer of patient records, including copies of radiographs, to a succeeding practitioner or, if requested, to the patient. For the purposes of this subsection, "active patient" means any person whom the permit holder has examined, treated, cared for or consulted with during the two year period before the discontinuation of practice.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 18, Chapter 4, Articles 1-3, 6, 8



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 4, 2022

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

FROM: Council Staff

DATE: September 6, 2022

SUBJECT: **Arizona Department of Environmental Quality**
Title 18, Chapter 4, Articles 1-3, 6 & 8

This Five-Year Review Report (5YRR) from the Department of Environmental Quality (Department) relates to rules in Title 18, Chapter 4, regarding Safe Drinking Water. The report covers the following Articles:

- Article 1:** Primary Drinking Water Regulations
- Article 2:** State Drinking Water Regulations
- Article 3:** Monitoring and Assistance Program
- Article 6:** Capacity Development Requirements for a New Public Drinking Water System
- Article 8:** Technical Assistance

In the last 5YRR for these rules the Department proposed to amend several of its rules. The Department indicates they did not complete the proposed changes due to higher priority strategic planning and agency resource constraints.

Proposed Action

For the specific reasons mentioned in the report, the Department is planning to amend several of its rules to improve their overall clarity, effectiveness, enforcement, and consistency

with other rules and statutes. The Department indicates it plans to submit a Rulemaking to the Council by March 2023.

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 believes that the qualitative assessments of the economic impacts of the rules remains accurate and any costs have been minor. The Department believes that the rules' impacts on the state's economy, small business, and consumers has not changed since the effective date and the only changes would be to adjust any dollar values for costs and benefits to adjust for inflation.

According to the Department, the Department regulates approximately 1,522 public water systems (PWS) that serve 6,775,314 of the total 7,292,000 Arizona population (about 93%) as of June 2021. As of December 17, 2021, the Department administers 825 Monitoring Assistance Programs (MAP).

Stakeholders include the Department, operators of PWSs, and the general public.

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 believes that the benefits of all rules under review outweigh the costs because it is the state's priority to ensure drinking water quality and human health.

4. Has the agency received any written criticisms of the rules over the last five years?

Yes, the Department indicates it received written comments to the rules. Council staff believes the Department adequately responded to the comments.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes, the Department indicates the rules are overall clear, concise, and understandable with the exception of the following:

R18-4-603 - Technical Capacity

Appendix C. - Financial Capacity for CWS and NTNCWS Worksheet 1

Appendix D. - CWS and NTNCWS Financial Viability Test

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates the rules are overall consistent with other rules and statutes with the exception of the following:

- R18-4-102 - Incorporation by Reference of 40 CFR 141 and 142
- R18-4-121 - Ground Water Rule - 40 CFR 141, Subpart S
- R18-4-208 - Sanitary Surveys

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are overall effective in achieving their objectives with the exception of the following:

- R18-4-602 - Elementary Business Plan
- R18-4-605 - Financial Capacity
- R18-4-606 - Review, Approval, Denial Process

Appendix C. Financial Capacity for CWS and NTNCWS Worksheet 1

Appendix D. CWS and NTNCWS Financial Viability Test

R18-4-803 - Master Priority List

R18-4-804 - Technical Assistance Awards

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rule are overall enforced as written with the exception of the following:

- R18-4-605 - Financial Capacity
- R18-4-804 - Technical Assistance Awards

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

Yes, the Department indicates the rules are not more stringent than the corresponding federal laws; 40 CFR 141 and 142, 42 U.S.C. § 300f et seq.

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 general permit.

11. Conclusion

As mentioned above, and for the specific reasons mentioned in the report, the Department is proposing to amend several of its rules. The proposed changes will result in rules that are more clear, concise, understandable, effective, and consistent with other rules and statutes. The Department indicates it plans to submit a Rulemaking to the Council by March 2023.

Council staff recommends approval of this report.



Douglas A. Ducey
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera
Director

June 28, 2022

SENT VIA EMAIL ONLY

Nicole Sornsin, 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 4, Articles 1, 2, and 3

Dear Chair Sornsin:

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 4, Articles 1, 2, and 3: Safe Drinking Water.

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 Edwin Slade, ADEQ Administrative Counsel, at 602-771-2242 or slade.edwin@azdeq.gov if you have any questions.

Sincerely,

Misael Cabrera, P.E.
Director

Enclosure

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**Arizona Department of Environmental Quality
Five-Year Review Report**

Title 18. Environmental Quality

Chapter 4. Department of Environmental Quality – Safe Drinking Water

Article 1: Primary Drinking Water Regulations

Article 2: State Drinking Water Regulations

Article 3: Monitoring and Assistance Program

Article 6: Capacity Development Requirements for a New Public Drinking Water System

Article 8: Technical Assistance

October 4, 2022

1. Authorization of the rule by existing statutes

Article 1: Primary Drinking Water Regulations

General Statutory Authority: A.R.S. §§ 49-104(A)(1), (A)(7), (A)(10), (B)(4), (B)(8) and Title 49, Chapter 2, Article 9 Potable Water Systems.

Specific Statutory Authority: A.R.S. §§ 49-202(A), 49-351, 49-352, 49-353, 49-353.01.

Article 2: State Drinking Water Regulations

General Statutory Authority: A.R.S. §§ 49-104(A)(1), (A)(7), (A)(10), (B)(4), (B)(8) and Title 49, Chapter 2, Article 9 Potable Water Systems.

Specific Statutory Authority: A.R.S. §§ 49-202(A), 49-351, 49-352, 49-353, 49-353.01, and 49-354.

Article 3: Monitoring Assistance Program

General Statutory Authority: A.R.S. §§ 49-104(A)(1), (A)(7), (A)(10), (B)(4), (B)(8) and Title 49, Chapter 2, Article 9 Potable Water Systems.

Specific Statutory Authority: A.R.S. §§ 49-202(A), 49-351, 49-352, 49-353, 49-353.01, and 49-360.

Article 6: Capacity Development Requirements for a New Public Drinking Water System

General Statutory Authority: A.R.S. §§ 49-104(A)(1), (A)(7), (A)(10), (B)(4), (B)(8) and Title 49, Chapter 2, Article 9 Potable Water Systems.

Specific Statutory Authority: A.R.S. §§ 49-202(A), 49-351, and 49-353.

Article 8: Technical Assistance

General Statutory Authority: A.R.S. §§ 49-104(A)(1), (A)(7), (A)(10), (B)(4), (B)(8) and Title 49, Chapter 2, Article 9 Potable Water Systems.

Specific Statutory Authority: A.R.S. §§ 49-202(A), 49-351, 49-353(A)(3) and 49-358.

2. **The objective of each rule:**

Rule	Objective
Article 1: Primary Drinking Water Regulations	Article 1 incorporates by reference the relevant National Primary Drinking Water Regulations in 40 CFR 141 and 142. The general format of the Safe Drinking Water Act (“SDWA”) regulations is that the EPA sets maximum contaminant levels (“MCL”) on contaminants. The EPA also sets regulatory criteria that vary according to the size of the user base of the Public Water System (“PWS”), whether the PWS uses ground water or surface water as the source of its drinking water, and the type of treatment a PWS uses on its source water. A PWS is required to monitor (sample and analyze) its water for the listed contaminants, and to submit regular reports to the state agency. If an MCL is exceeded, a PWS characteristically must retest, increase the monitoring frequency and provide public notification to water system users/customers. A PWS also may need to take corrective action(s), which may include removing the offending source from service or implementing capital improvements to mitigate the exceedance. Another element of the regulatory format is that Community Water Systems (“CWS”) must compile and publish regular reports for their customers/users regarding the quality of the drinking water.
R18-4-101. Authority and Purpose	This rule states ADEQ's authority and purpose for Chapter 4 under Arizona Revised Statutes and SDWA.
R18-4-102. Incorporation by Reference of 40 CFR 141 and 142	This rule incorporates by reference the federal rules on safe drinking water located in 40 CFR Parts 141 and 142 through July 1, 2014.
R18-4-103. General - 40 CFR 141, Subpart A	This rule incorporates by reference 40 CFR 141, Subpart A, and establishes specific sections of Subpart A of the Code of Federal Regulations that are not incorporated by reference. The rule defines important terms in 18 A.A.C. Chapter 4 so that the rules are understandable to the general public. This rule also establishes which sections of the Code of Federal Regulations are modified to convey the proper context that Arizona is the regulator, not the EPA.
R18-4-104. Maximum Contaminant Levels - 40 CFR 141, Subpart B	This rule incorporates by reference 40 CFR 141, Subpart B.
R18-4-105. Monitoring and Analytical Requirements - 40 CFR 141, Subpart C and Appendix A	This rule incorporates by reference 40 CFR 141, Subpart C, and Appendix A thereto, and establishes the specific sections or subsections of 40 CFR 141, Subpart C that are not incorporated by reference and the sections or subsections that are modified in order to convey the proper context that the state of Arizona is the regulator, not the EPA.

<p>R18-4-106. Reporting and Recordkeeping - 40 CFR 141, Subpart D</p>	<p>This rule incorporates by reference 40 CFR 141, Subpart D and adds additional requirements on reporting to supplement Subpart D.</p>
<p>R18-4-107. Special Regulations, Including Monitoring Regulations and Prohibition on Lead Use - 40 CFR 141, Subpart E</p>	<p>This rule incorporates by reference 40 CFR 141, Subpart E.</p>
<p>R18-4-108. Maximum Contaminant Level Goals and Maximum Residual Disinfectant Level Goals - 40 CFR 141, Subpart F</p>	<p>This rule incorporates by reference 40 CFR 141, Subpart F.</p>
<p>R18-4-109. Primary Drinking Water Regulations: Maximum Contaminant Levels and Maximum Residual Disinfectant Levels - 40 CFR 141, Subpart G</p>	<p>This rule incorporates by reference 40 CFR 141, Subpart G.</p>
<p>R18-4-110. Filtration and Disinfection - 40 CFR 141, Subpart H</p>	<p>This rule incorporates by reference 40 CFR 141, Subpart H and modifies the section as appropriate to convey the proper context that the state of Arizona is a co-regulator along with the EPA.</p>
<p>R18-4-111. Control of Lead and Copper - 40 CFR 141, Subpart I</p>	<p>This rule incorporates by reference 40 CFR 141, Subpart I, and establishes and modifies the specific subsection of 40 CFR 141, Subpart I that is not incorporated by reference in order to convey the proper context that the state of Arizona is the regulator, not the EPA.</p>

R18-4-112. Use of Non-Centralized Treatment Devices - 40 CFR 141, Subpart J	This rule incorporates by reference 40 CFR 141, Subpart J.
R18-4-113. Treatment Techniques - 40 CFR 141, Subpart K	This rule incorporates by reference 40 CFR 141, Subpart K.
R18-4-114. Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors - 40 CFR 141, Subpart L	This rule incorporates by reference 40 CFR 141, Subpart L. It also establishes the specific section of 40 CFR 141, Subpart L that is not incorporated by reference and establishes the additional requirements to convey the proper context that Arizona is the regulator, not the EPA.
R18-4-117. Consumer Confidence Reports - 40 CFR 141, Subpart O	This rule incorporates by reference 40 CFR 141, Subpart O.
R18-4-118. Enhanced Filtration and Disinfection - Systems Serving 10,000 or More People - 40 CFR 141, Subpart P	This rule incorporates by reference 40 CFR 141, Subpart P.
R18-4-119. Public Notification of Drinking Water Violations - 40 CFR 141, Subpart Q	This rule incorporates by reference 40 CFR 141, Subpart Q.

R18-4-121. Ground Water Rule - 40 CFR 141, Subpart S	This rule incorporates by reference 40 CFR 141, Subpart S.
R18-4-122. Enhanced Filtration and Disinfection - Systems Serving Fewer Than 10,000 People - 40 CFR 141, Subpart T	This rule incorporates by reference 40 CFR 141, Subpart T.
R18-4-123. Initial Distribution System Evaluations - 40 CFR 141, Subpart U	This rule incorporates by reference 40 CFR 141, Subpart U.
R18-4-124. Stage 2 Disinfection Byproducts Requirements - 40 CFR 141, Subpart V	This rule incorporates by reference 40 CFR 141, Subpart V.
R18-4-125. Enhanced Treatment For Cryptosporidium - 40 CFR 141, Subpart W	This rule incorporates by reference 40 CFR 141, Subpart W.
R18-4-126. Revised Total Coliform Rule - 40 CFR Part 141, Subpart Y	This new section incorporates by reference 40 CFR Part 141, Subpart Y (40 CFR 141.851 through 141.861).
Article 2: State Drinking Water Regulations	The state drinking water rules are based on state statutes. They supplement the federal rules to ensure public health and fulfill ADEQ's responsibility to ensure that "all potable water distributed or sold to the public through public water systems is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease causing substances or organisms." A.R.S. § 49-351(A).

R18-4-201. Enforcement	This rule provides for a water supplier who constructs, operates, or maintains a PWS contrary to the provisions of the SDWA; A.R.S. Title 49, Chapter 2; and A.A.C. Title 18, Chapter 4 and 5. This rule also subjects a water supplier, who fails to maintain quality of water within the PWS, to the actions provided in statute for orders of abatement under A.R.S. § 49-142 and enforcement authority of A.R.S. § 49-354.
R18-4-202. Certified Operators	The rule requires that a PWS provide a properly certified operator to operate each water treatment facility and distribution system. This ensures that the operator of a PWS has a minimum level of knowledge, skill, and experience.
R18-4-203. Operation and Maintenance	The rule requires a water supplier to maintain and keep in proper operating condition all facilities used in production, treatment and distribution of the water supply.
R18-4-204. Emergency Operation Plans	The rule requires that a CWS develop and keep an emergency operations plan detailing how it will assure continuation of service in listed emergency situations.
R18-4-205. Sample Collection, Preservation, and Transportation	The rule provides that the collection, preservation, and transportation of drinking water samples are consistent with both Arizona Department of Health Services procedures and EPA analytical methods.
R18-4-206. Monitoring and Sampling by the Department and MAP Contractors	The rule allows ADEQ or its contractor to take samples from a PWS and specifies the sampling point.
R18-4-207. Entry and Inspection of Public Water Systems	This rule requires ADEQ to adhere to Arizona law and federal rules when conducting inspections to determine whether a PWS is operating in compliance with the regulations in 18 A.A.C. 4 and incorporates by reference the federal rule relevant to entry and inspection.
R18-4-208. Sanitary Surveys	The rule requires that a PWS undergo a sanitary survey on a routine basis or when ADEQ determines that a PWS is not in compliance with the requirements of this Chapter. When establishing the sanitary survey schedule, ADEQ will consider: the quality and/or type of the source water; whether the PWS is properly designed, maintained, and operated; and the regulatory classification of the water system.
R18-4-209. Unsafe Supplies	The rule provides authority for ADEQ to order a PWS to disconnect a source to protect public health from an acute health risk that is attributable to the source.
R18-4-210. Total Coliform; Special Events	The rule establishes E. coli monitoring and reporting criteria for a water system that supplies water for short-term special events serving a large population and requires a PWS to take corrective action as required in new R18-4-126 after receiving a positive coliform result, including taking additional samples until all samples are negative for E.coli.

R18-4-211. Reporting Requirements	The rule supplements the federal reporting requirements established in R18-4-106 for specific situations of cross connection incidents, emergencies and waterborne disease outbreak, and also specifies the format for reports.
R18-4-212. Groundwater Under the Direct Influence of Surface Water	The rule sets out the criteria for determining whether the groundwater used by a PWS may be under the influence of surface water and thereby in need of additional monitoring to safeguard the public served by the water system.
Table 1. Decision Matrix for Determining Groundwater Under the Direct Influence of Surface Water	The table clarifies the criteria for determining whether the groundwater used by a PWS may be under the influence of surface water and thereby in need of additional monitoring to safeguard the public served by the water system.
R18-4-213. Standards for Additives, Materials, and Equipment	This rule outlines the applicable standards for chemical and material products permitted to be added to water production or treatment.
R18-4-214. Hauled Water	The rule requires that hauled water for delivery to a PWS be obtained from an approved source and transported in a manner to protect the water from contamination.
R18-4-215. Backflow Prevention	The rule explains how a PWS complies with the regulatory requirement of installing, maintaining and inspecting backflow-prevention assemblies to deter contamination to service connections and the PWS as a whole.
R18-4-216. Vending Machines	The rule establishes responsibilities of the owner for proper operation of a drinking water vending machine.
R18-4-217. Use of Blending to Achieve Compliance with Maximum Contaminant Levels	This rule sets out the requirements for blending several water sources in order to comply with safe drinking water regulations.
R18-4-218. Criteria and Procedures for Public Water Systems Using Point-of-Entry or Point-of-Use	The rule describes ADEQ's requirements for water systems that plan to use point-of-use or point-of-entry water treatment devices to achieve compliance with safe drinking water regulations.

Treatment Devices	
R18-4-219. Exclusions	The rule sets forth those circumstances under which ADEQ may grant an exclusion from state drinking water laws that have no federal equivalent and the requirements which must be met by the PWS and ADEQ in order to grant an exclusion. The rule requires that ADEQ consider certain criteria in reviewing an application, notify the applicant of its decision within a certain timeframe, and provide the applicant the opportunity to submit additional information if ADEQ initially denies the application.
R18-4-223. Use of Bottled Water	This rule allows a PWS to temporarily use bottled water in avoidance of an unreasonable public health risk—but not to obtain compliance with applicable MCLs.
Article 3: Monitoring and Assistance Program	The Monitoring Assistance Program (“MAP”) assists small PWSs with water quality sampling and monitoring required by the SDWA. ADEQ administers the program and provides monitoring for categories of contaminants listed in A.R.S. § 49-360. The goal of the program is to keep the water systems in compliance with the SDWA through a regular testing schedule that is more affordable through an economies-of-scale purchasing approach. CWSs and Non-Transient, Non-Community Water System (“NTNCWS”) serving less than 10,000 persons are required to participate in the monitoring assistance program. Each participating system pays an annual fee into the monitoring assistance fund, which provides for the collection, transportation and analysis of samples by a contractor or contractors hired by ADEQ.
R18-4-301 Applicability	The rule provides the criteria for participating in MAP.
R18-4-302. Contractor Responsibilities	The rule establishes the responsibilities of the contractor for MAP.
R18-4-303. Public Water System Responsibilities	The rule establishes the responsibilities of a PWS that participates in MAP.
R18-4-304. Fees for the Monitoring Assistance Program	The rule sets forth fees for PWSs under the MAP.
R18-4-305. Collection and Payment of Fees	The rule sets forth billing and payment requirements for PWSs under MAP.
Article 6: Capacity Development Requirements for a New Public Drinking Water System	As part of the 1996 amendments to the SDWA, states were required to obtain the authority to ensure that all new CWSs and all new NTNCWS have technical, financial, and managerial capacity to meet National Primary Drinking Water rules. This article sets forth the capacity development requirements for the technical, managerial, and financial capacity of a new PWS.

R18-4-601. Applicability	The rule establishes which PWSs are subject to the capacity development requirements.
R18-4-602. Elementary Business Plan	The rule sets forth the requirements for the filing of an Elementary Business Plan (“EBP”) that a new PWS must submit to ADEQ for review and approval prior to the start of operation.
R18-4-603. Technical Capacity	The rule sets forth the requirements for a technical capacity determination of a new PWS.
R18-4-604. Managerial Capacity	The rule sets forth the requirements for a managerial capacity determination of a new PWS.
R18-4-605. Financial Capacity	The rule sets forth the requirements for financial capacity determination of a new PWS after the PWS submits to ADEQ the information pertaining to the system’s financial capacity that is specified in Appendices C and D of Article 6.
R18-4-606. Review, Approval, Denial Process	The rule sets forth requirements for the review, approval, and denial by ADEQ of technical, managerial, and financial capacity of a new PWS. In addition, the rule lists criteria which PWSs must meet in order to be approved for technical, managerial, and financial capacity.
R18-4-607. Appeals	The rule sets forth a requirement that allows an owner of a PWS to appeal a denial decision made by ADEQ of an EBP under A.R.S. § 41-1092 et seq.
Appendix A. Capacity Development Review Checklist for CWS and NTNCWS	The appendix provides an EBP checklist for new PWSs to submit to ADEQ for review of technical, managerial, and financial capacity as part of the system’s EBP.
Appendix B. General Statement of Responsibility by Owner	The appendix provides a drinking water capacity development statement of responsibility form for the owner of a new PWS to submit to ADEQ as part of the system’s EBP.
Appendix C. Financial Capacity for CWS and NTNCWS Worksheet 1	The appendix provides a financial capacity worksheet for new PWSs to submit to ADEQ as part of the system’s EBP.
Appendix D. CWS and NTNCWS Financial Viability Test	The appendix provides a water system financial viability test form for new PWSs to submit to ADEQ as part of the system’s EBP.
Article 8: Technical Assistance	The technical assistance program is related to the capacity development program, also part of the 1996 amendments to the SDWA. This program provides information and technical assistance in managerial, accounting, engineering, and other technical areas to owners and operators of existing water systems. The rules address the methods and

	criteria by which ADEQ prioritizes existing systems according to their need for technical, financial, and managerial capacity. The rules also address the methods and criteria by which ADEQ provides assistance to the systems with the greatest capacity development needs.
R18-4-802. Technical Assistance Plan	The rule sets forth requirements for ADEQ’s technical assistance plan. The purpose of the plan is to improve the ability of a PWS to provide safe drinking water, and the plan is published annually in the capacity development report.
R18-4-803. Master Priority List	The rule sets forth requirements for the development of a Master Priority List (“MPL”) that ranks PWSs according to their need for technical assistance.
R18-4-804. Technical Assistance Awards	This rule sets forth requirements for awarding technical assistance by ADEQ to PWSs with the highest ranking on the MPL.

3. **Are the rules effective in achieving their objectives?** Yes No

The rules are generally effective in achieving their objectives except as noted below.

Rule	Explanation
R18-4-602. Elementary Business Plan	ADEQ is considering requiring approval of the EBP after the authorization <i>to</i> construct but before authorization <i>of</i> construction through a potential future rulemaking (subject to the Governor’s approval). The rule currently requires that an owner not commence operation of a public water system (once it has been constructed) without Department approval under R18-4-606. However, after ADEQ has given authorization of construction, ADEQ’s denial of the EBP is not practical. This has no impact on human health.
R18-4-605. Financial Capacity	Small water systems have had difficulty completing the financial capacity requirements listed in Appendices C and D because the worksheets in these Appendices are complicated, out of date, and not entirely applicable to non-revenue systems. Accordingly, the agency is considering removing the Appendices through a potential future rulemaking (subject to the Governor’s approval). This has no impact to human health.
R18-4-606. Review, Approval, Denial Process	Subsections C and D of this rule are not effective because for the former, it is unlikely that a water system will seek a financial determination at the Arizona Corporation Commission (“ACC”) rather than ADEQ, and for the latter, it is unclear that the Arizona Department of Water Resources (“ADWR”) reviews financial capacity. Accordingly, ADEQ is considering removing subsections C and D and revising subsection E to require financial review by ADEQ through a potential future rulemaking (subject to the governor’s approval). This has no impact on human health.
Appendix C. Financial Capacity for CWS and NTNCWS Worksheet 1	This worksheet is not effective for small systems or systems that are non-revenue (e.g., business, hospitals, schools) because the worksheet is complicated, out of date, and not entirely applicable to non-revenue systems. Accordingly, ADEQ is considering removing Appendix C through a potential future rulemaking (subject to the Governor’s approval) so that ADEQ has more flexibility in modifying the worksheet depending on the type of system. This has no impact on human health.

Appendix D. CWS and NTNCWS Financial Viability Test	This worksheet is not effective for small systems or systems that are non-revenue (e.g., business, hospitals, schools) because the worksheet is complicated, out of date, and not entirely applicable to non-revenue systems. Accordingly, ADEQ is considering removing Appendix D through a potential future rulemaking (subject to the Governor’s approval). This has no impact on human health.
R18-4-803. Master Priority List	ADEQ is considering removing the MPL requirement through a potential future rulemaking (subject to the Governor’s approval) because currently ADEQ conducts a more robust assessment to prioritize technical assistance that also incorporates changes to systems throughout the year, instead of relying solely on the MPL which is only published once each year. ADEQ’s current practice does a better job at prioritizing immediate human health issues.
R18-4-804. Technical Assistance Awards	The MPL prioritizes water systems in need at the beginning of a fiscal year. However, health based and priority issues occur throughout the year, and as a result, the list of priority systems changes. Therefore, ADEQ has a more robust and dynamic assessment to prioritize technical assistance and does not rely solely on the MPL. Accordingly, ADEQ is considering a rulemaking (subject to the Governor’s approval) to not require that technical assistance be provided based solely on the MPL. ADEQ’s current practice does a better job at prioritizing immediate human health issues.

4. **Are the rules consistent with other rules and statutes?** Yes No

The rules are generally consistent with the rules and statutes of Arizona and the United States, including the SDWA and 40 CFR Parts 141–142 except as noted below.

Rule	Explanation
R18-4-102. Incorporation by Reference of 40 CFR 141 and 142	ADEQ has not incorporated the Alternative Test Procedures for the Analysis of Contaminants resulting from federal updates to Appendix A of Subpart C of 40 CFR 141. This has no impact on human health.
R18-4-121. Ground Water Rule - 40 CFR 141, Subpart S	Unlike 40 CFR 141 Subpart S, ADEQ requires consecutive systems to first sample at the interconnect tap before requiring the wholesale system to sample all of their water sources. This extra step helps avoid unnecessary sampling for the wholesale system. This sampling procedure provides the same protection of human health as the procedure outlined in the CFR.
R18-4-208. Sanitary Surveys	The minimum frequency of required sanitary surveys is not consistent with 40 CFR § 142.16, however the rule provides authority for ADEQ to conduct sanitary surveys more frequently than the minimum frequency and in practice ADEQ is conducting the surveys at a frequency that meets federal requirements. ADEQ’s practice provides the same protection of human health as what is required by the CFR.

5. **Are the rules enforced as written?**

Yes No

The rules are generally enforced as written except as noted below.

Rule	Explanation
R18-4-605. Financial Capacity	ADEQ is meeting the intent of this rule but the forms in rule as appendices ask questions of non-revenue generating water systems that are not applicable in some cases. Therefore, for non-revenue generating water systems (e.g., hospitals, schools, businesses) that have trouble completing the financial requirements, ADEQ is considering making the requirements for financial capacity more applicable. The agency is considering changing the appendices through a potential future rulemaking. This has no impact on human health.
R18-4-804. Technical Assistance Awards	The MPL prioritizes water systems in need at the beginning of a fiscal year. However, health based and priority issues occur throughout the year, and as a result, the list of priority systems changes. Therefore, ADEQ has a more robust assessment to prioritize technical assistance and does not rely solely on the MPL. Accordingly, ADEQ is considering a rulemaking (subject to the Governor’s Office approval) to remove the requirement that technical assistance be provided exclusively based on the MPL prioritization. ADEQ’s current practice does a better job at prioritizing immediate human health issues.

6. **Are the rules clear, concise, and understandable?**

Yes No

The rules are clear, concise, and understandable except as noted below.

Rule	Explanation
R18-4-603. Technical Capacity	Customers have expressed that the source adequacy requirements lack clarity. In response, ADEQ prepared a guidance document in 2018–2019 on how to complete the source adequacy requirements. This has no impact on human health.
Appendix C. Financial Capacity for CWS and NTNCWS Worksheet 1	This worksheet is complicated, out of date, and not entirely applicable to non-revenue systems. Accordingly, ADEQ is considering removing Appendix C through a potential future rulemaking (subject to the Governor’s approval) so that ADEQ has more flexibility in modifying the worksheet depending on the type of system. This has no impact on human health.
Appendix D. CWS and NTNCWS Financial Viability Test	This worksheet is complicated, out of date, and not entirely applicable to non-revenue systems. Accordingly, ADEQ is considering removing Appendix D through a potential future rulemaking (subject to the Governor’s approval). This has no impact on human health.

7. Has the agency received written criticisms of the rules within the last five years? Yes No

Rule	Explanation
Article 1 Generally	<p><u>Comment 1:</u> need to remove all the revision/old laws and only have current rules in plain English</p> <p><u>Response 1:</u> ADEQ appreciates this comment. ADEQ strives to ensure its rules are clear, concise and understandable while accurately conveying complicated information necessary to protect human health and the environment. As the Safe Drinking Water Program is based on federal law, ADEQ's ability to put the rule in plain English is limited.</p>
Article 1 Generally	<p><u>Comment 2:</u> They could be a bit more "User Friendly" to make them easily understood.</p> <p><u>Response 2:</u> ADEQ appreciates this comment. ADEQ strives to ensure its rules are clear, concise and understandable while accurately conveying complicated information necessary to protect human health and the environment. . As the Safe Drinking Water Program is based on federal law, ADEQ's ability to put the rule in plain English is limited.</p>
Article 1 Generally	<p><u>Comment 3:</u> The Primary drinking water standards are not clear and concise. That being said, it may be helpful to develop a Help Guide that explains where/how ADEQ requirements differ from the Federal primary. Ensure all reporting forms have clear and concise instructions. For example, the Supplemental Lead and Copper reporting forms do not contain clear and concise due to lack of clear instructions (there are two forms; hard to know which one to use; both are listed as "supplemental" in that the information is not optional, but the use of the form is - it would be good to outright state that "this information may be provided on either of these forms, or you may choose to develop your own form for the purpose of supplying this information", etc.</p> <p><u>Response 3:</u> ADEQ appreciates your feedback and will take your comments under advisement during any future revision of forms.</p>
Article 1 Generally	<p><u>Comment 4:</u> legal BS that make no sense to normal people. Simplify.../</p> <p><u>Response 4:</u> ADEQ appreciates this comment. As the Safe Drinking Water Program is based on federal law, ADEQ's ability to simplify the rules is limited.</p>
Article 1 Generally	<p><u>Comment 5:</u> confused with all the old stuff and revisions</p> <p><u>Response 5:</u> ADEQ appreciates this comment. However, without more specificity, the Agency cannot take any improvement action.</p>
Article 1 Generally	<p><u>Comment 6:</u> Drinking water regulation is comprehensive with each requirement taking a slightly different approach in terms of sample location, objectives, sample numbers, corrective action, timing, etc. The program is inherently burdensome</p>

	<p>and I would like to think there is a less-burdensome version of it, but I can't tell you what that might look like.</p> <p><u>Response 6:</u> ADEQ appreciates your feedback and is always looking for ways to continuously improve our process for customers. . As the Safe Drinking Water Program is based on federal law, ADEQ's ability to change requirements is limited. ADEQ strives to ensure its rules are clear, concise and understandable while accurately conveying complicated information necessary to protect human health and the environment.</p>
Article 1 Generally	<p><u>Comment 7:</u> simplify the entire package</p> <p><u>Response 7:</u> ADEQ appreciates this comment, but ADEQ believes that the rules impose the least possible burden to achieve their objective. . As the Safe Drinking Water Program is based on federal law, ADEQ's ability to simplify the rules is limited. ADEQ strives to ensure its rules are clear, concise and understandable while accurately conveying complicated information necessary to protect human health and the environment.</p>
Article 1 Generally	<p><u>Comment 8:</u> The rules are concise, clear and easy to follow.</p> <p><u>Response 8:</u> ADEQ appreciates this comment.</p>
Article 1 Generally	<p><u>Comment 9:</u> Everything seemed clear, concise and understandable.</p> <p><u>Response 9:</u> ADEQ appreciates this comment.</p>
Article 1 Generally	<p><u>Comment 10:</u> Clear concise Fact Sheets, "cheat sheets", checklists, etc are always welcome. The rules are comprehensive and can be difficult to read (Federal level more so than State, but that is because most of Fed is incorporated by reference).</p> <p><u>Response 10:</u> ADEQ appreciates this comment and is always looking for ways to continuously improve our process for customers.</p>
Article 1 Generally	<p><u>Comment 11:</u> Very good overview training</p> <p><u>Response 11:</u> ADEQ appreciates this comment.</p>
-Article 1 Generally	<p><u>Comment 12:</u> New and sustainable water technology should be incorporated into the rule, including but not limited to rainwater, atmospheric water generation and drinking water devices. In a climate change environment, it is necessary to expand the categories of water sources beyond traditional surface and ground water. In absence of a regulatory change, technologies capable of making drinking water in a sustainable way at no cost to the environment or existing water resources may be limited and innovation discouraged.</p> <p>Due to the large number of Arizona public water systems that are out-of-compliance due to ground water contamination and may be out of compliance in the future following federal PFAS limits, making space in the regulatory regime for alternative water sources, such as drinking water devices, would further public interests of health and safety in assisting public water systems achieve compliance.</p>

	<p><u>Response 12:</u> ADEQ appreciates your feedback, and as the regulated community pursues new and innovative technologies, ADEQ will consider the technologies during relevant future rulemakings (subject to the governor’s approval).</p>
R18-4-103. General - 40 CFR 141, Subpart A	<p><u>Comment 13:</u> Add a new definition (“drinking water device”) to the definitions section.</p> <p>New Definition: “Drinking water device means a technology or device that meets the following requirements: (a) produces water meeting water quality requirements of the National Primary Drinking Water Regulations without external treatment, (b) utilizes water from a source other than ground or surface water and (c) and is not intended to meet all potable water needs, but rather, to supply or supplement drinking water to the public.”</p> <p><u>Response 13:</u> ADEQ incorporates 40 CFR141 subpart A. While ADEQ needs more information about the goals of the suggested language, ADEQ is interested in this idea and will consider the definition during relevant future rulemakings (subject to the governor’s approval).</p>
R18-4-103 General -40 CFR 141, Subpart A	<p><u>Comment 14:</u> In section R18-4-103, the definition of a service line includes pigtail, gooseneck and fittings. With the LCRR, water systems are required to identify the composition of private service lines but the LCRR doesn't require identification of pigtails, goosenecks and fitting in the inventory section. How will these discrepancies be reconciled?</p> <p><u>Response 14:</u> The modified federal LCCR rule just took effect in December of 2021, and ADEQ has until December of 2023 to incorporate the federal rule. ADEQ anticipates seeking approval from the Governor’s Office pursuant to Executive Order 2022-01 to update the drinking water rules regulating lead and copper in 18 A.A.C. 4. If approved, ADEQ will consider this and other issues raised by stakeholders during the rulemaking process.</p>
R18-4-111. Control of Lead and Copper – 40 CFR 141, Subpart I	<p><u>Comment 15:</u> Are the additional parameters analyzed now a rule for whenever Lead and Copper sampling is conducted?</p> <p><u>Response 15:</u> The additional sampling is required only when lead and copper ALEs are triggered.</p>
R18-4-112. Use of Non-Centralized Treatment Devices - 40 CFR 141, Subpart J	<p><u>Comment 16:</u> Add the following [after 40 CFR 141.101 is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions]: In addition, A public water system may use a drinking water device to comply with maximum contaminant levels only if they meet the following requirements.</p> <ol style="list-style-type: none"> 1. Produces water that meets the Maximum Contaminant Levels of 40CFR, 141 Subpart B 2. Does not require external treatment; 3. Is used in conjunction with an approved potable water source for all other potable needs beyond consumption; 4. Meets the requirements of Subpart J, 141.100, b, c, d – 1 & 2.

	<p><u>Response 16:</u> ADEQ incorporates 40 CFR141 subpart A as it is written. While ADEQ needs more information about the goals of the suggested language, ADEQ is interested in this idea and will consider it during relevant future rulemakings (subject to the governor’s approval).</p>
<p>Article 2 Generally</p>	<p><u>Comment 1:</u> Groundwater Source Monitoring Groundwater wells are effectively only checked to determine if they are biologically active when they receive their original New Source Approval. There needs to be an ongoing methodology to require monitoring and reporting of fecal and total coliforms in groundwater wells. If multiple fecal and/or total coliform positives are reported then additional testing for the following contaminants needs to be performed: e. Coli, Cryptosporidium, Giardia lamblia. These biologicals would confirm that a groundwater well might be a Groundwater Under the Direct Influence (GWUDI) well or that the well might be hydro-geologically connected to an adjacent non-potable water source such as a reclaimed water recharge well. The concern beyond a GWUDI surface water type situation is that reclaimed water is not treated by wastewater treatment plants to remove Cryptosporidium and Giardia lamblia and that regrowth of pathogens can occur within reclaimed water distribution systems since there is no requirement within the wastewater rules to disinfect reclaimed water distribution systems. This is not a vacant concern as many times a reclaimed water recharge well or another non-potable water source discharging to an aquifer is installed adjacent to a drinking water well after the drinking water well has been in operation for a long period of time. Note that safeguards are in the Sanitary Survey AAC (R18-4-208) and Unsafe Supplies AAC (R18-4-209) rules but they are reactive rather than proactive (i.e. routine testing to proactively discover any groundwater source water quality problems is not required). The Reporting Requirements AAC (R18-4-212(A).4 & R18-4-212(A).8) are also reactive and use language that assumes such data will be readily available. For example, R18-4-212(A).8 states: “A groundwater source for which data is available that shows that total coliform, fecal coliform, or E. Coli are present in untreated groundwater from the source that are not related to new well development, source modification, repair, or maintenance;’ This approach assumes that the biological water quality of groundwater wells is being routinely monitored which is not the case. Sanitary surveys will not detect problems with GWUDI or water contamination by an adjacent source such as a reclaimed water recharge well, septic system, or groundwater remediation site. There needs to be rule revisions to require proactive quarterly, bi-annual or annual of fecal and total coliforms with a path towards additional testing required for e. Coli, Cryptosporidium and Giardia lamblia if multiple fecal and total coliforms positives are observed.</p> <p><u>Response 1:</u> ADEQ appreciates the comment and will take the comment under advisement during any potential future rulemakings (subject to the governor’s approval) addressing the rules in R18-4, Article 4. Currently, in addition to sampling a groundwater well at the time of New Source Approval, the Groundwater Rule is triggered with a positive total coliform test under the routine Revised Total Coliform Rule sampling. ADEQ believes the rules adequately protect human health and the environment.</p>
<p>R18-4-215 Backflow Prevention</p>	<p><u>Comment 2:</u> AAC R18-4-215, “Backflow Prevention” a. R18-4-215(E): Change the wording of the existing sentence as marked up in [bold] font below: “The</p>

	<p>minimum level of backflow protection that is provided to protect a public water system shall be the level recommended in Section 7.2 of the Manual of Cross-Connection Control, Ninth Tenth Edition, USC-FCCCHR, KAP-200 University Park MC-2531, Los Angeles, CA, 90089-2531, December 1993 October 2009, (and no future editions or amendments), incorporated by reference and on file with the Department.” The justification for this change is that the Ninth Edition was published in 1994 and is out-of-date with copies being hard to source. The current edition is the Tenth Edition which was published October 1, 2009. Note that the various citations to the various Chapters/Sections within the “Manual of Cross-Connection Control” within AAC R18-4-215 appear to be correct for the new edition.</p> <p><u>Response 2:</u> While ADEQ believes the rules adequately protect human health and the environment, ADEQ agrees that this suggestion would benefit those relying on the rules. ADEQ will update this reference in an anticipated rulemaking (subject to the governor’s approval).</p>
Article 2 Generally	<p><u>Comment 3:</u> Make them more "User Friendly" to easily understand them.</p> <p><u>Response 3:</u> ADEQ appreciates this comment. ADEQ strives to ensure its rules are clear, concise and understandable while accurately conveying complicated information necessary to protect human health and the environment. As the Safe Drinking Water Program is based on federal law, ADEQ’s ability to make the rules more “user friendly” is limited.</p>
Article 2 Generally	<p><u>Comment 4:</u> legal BS that make no sense to normal people. Simplify.../</p> <p><u>Response 4:</u> ADEQ appreciates this comment. As the Safe Drinking Water Program is based on federal law, ADEQ’s ability to simplify the rules is limited.</p>
R18-4-211 Reporting Requirements	<p><u>Comment 5:</u> R18-4-211-A: five days isn't enough time to even receive results back from the lab so in an event of an exceedance it is almost always going to be reported more than five days after the exceedance occurs.</p> <p><u>Response 5:</u> The reporting requirements under subsection A of this rule do not require data from a lab to fulfill. Specifically, subsection A requires a cross connection incident report that must address: 1. Date and time of discovery of the cross connection incident, 2. Nature of the cross connection incident, 3. Affected area, 4. Cause of the cross connection incident, 5. Public health impact, 6. Date and text of any public health advisory issued, 7. Corrective action taken, and 8. Date of completion of corrective action.</p>
Article 2 Generally	<p><u>Comment 6:</u> simplify the entire package</p> <p><u>Response 6:</u> ADEQ appreciates this comment, but ADEQ believes that the rules impose the least possible burden to achieve their objective. As the Safe Drinking Water Program is based on federal law, ADEQ’s ability to simplify the rules is limited. ADEQ strives to ensure its rules are clear, concise and understandable while accurately conveying complicated information necessary to protect human health and the environment.</p>
Article 2 Generally	<p><u>Comment 7:</u> The rules are concise, clear and easy to follow.</p> <p><u>Response 7:</u> ADEQ appreciates this comment.</p>

Article 2 Generally	<p><u>Comment 8:</u> More user-friendly tools - Fact Sheets, "cheat sheets", checklists. I am happy to be part of a Committee that looks at these items.</p> <p><u>Response 8:</u> ADEQ appreciates this comment and is always looking for ways to continuously improve our process for customers. Also, ADEQ holds Operation Certification Training Events where ADEQ explains the rules and how to comply with them. These events are posted on ADEQ's websites. For more information please visit: https://www.ADEQ.gov/OperatorCertification</p>
Article 2 Generally	<p><u>Comment 9:</u> stop using lawyers to write your package use normal people without an underlying objective</p> <p><u>Response 9:</u> ADEQ appreciates this comment. In addition to ADEQ's professional staff, including legal specialists and scientists, ADEQ seeks input from stakeholders, including the general public, in developing rules and policies. As the Safe Drinking Water Program is based on federal law, ADEQ's ability to simplify the rules is limited.</p>
Articles 1 & 2 Generally	<p><u>Comment 1:</u> The rules laid out in the article are presented in a convenient manner that makes them easy to understand and implement at our facility.</p> <p><u>Response 1:</u> ADEQ appreciates this comment.</p>
Articles 1 & 2 Generally	<p><u>Comment 2:</u> your investigators need to do their job and not just call the water company and accept anything they tell them. I can show you two cases where complaints were filed and your investigators did nothing other than ask the water company for their excuse and accepted it as such. When asked their only comment was that Arizona Water's expert said it was ok even though I pointed out that I am an expert also and I told them it wasn't. I can prove what I was saying was correct and what Arizona Water was saying was incorrect, Had they bothered to do any investigation they would of seen that to be the case. Could of done many things to check, check with manufacture, check with ABPA, read the codes look up on line but they did nothing but ask the water company. Frankly the investigators should be fired for incompetency and dereliction of duties.</p> <p><u>Response 2:</u> Please direct concerns about staff or ADEQ processes to the Feedback Tracker https://azdeq.gov/feedback. ADEQ will follow-up with you directly if possible to understand and address your concerns. ADEQ investigates all drinking water complaints for non-compliance, ensures notification to the public of MCL violations, and requires a return to compliance as soon as possible.</p>
Articles 1 & 2 Generally	<p><u>Comment 3:</u> ADEQ has developed some very useful drinking water tools including the Drinking Water Fact Sheet (Pub FS-17-17, Nov 2017). That is a very useful document. Simple tools that at least get people started down the right path are always appreciated.</p> <p><u>Response 3:</u> ADEQ appreciates this comment.</p>
Articles 1 & 2 Generally	<p><u>Comment 4:</u> Very good presentation</p> <p><u>Response 4:</u> ADEQ appreciates this comment.</p>
Articles 1 & 2 Generally	<p><u>Comment 5:</u> Is it possible to make an edited/concise version of these articles, a "cheat sheet" without all of the cross references?</p>

	<p><u>Response 5:</u> While ADEQ appreciates this comment and is always looking for ways to continuously improve our process for customers, the rules must be cross-referenced to direct the regulated community to the appropriate federal regulation. ADEQ holds Operation Certification Training Events where ADEQ explains the rules and how to comply with them. These events are posted on ADEQ's websites. For more information please visit: https://www.ADEQ.gov/OperatorCertification</p>
Article 3 Generally	<p><u>Comment 1:</u> Communication with the sampler is great in most situations but there are some sites that I never hear about. Clients will occasionally send their MAP results to their remote operator but not always; consider sending an electronic copy to the assigned operator.</p> <p><u>Response 1:</u> ADEQ appreciates the comment. At this time, sampling results are sent to the owner or responsible party of the system unless the system has made other arrangements with ADEQ's contractor. It is then the owner or responsible party's responsibility to forward the results to their staff. Data is also available through ADEQ's contractor. Operators associated with the systems may inquire with ADEQ to acquire access.</p>
Article 3 Generally	<p><u>Comment 2:</u> The value of the program is well worth it except for Nitrate only years. It makes more sense to leave that to the system and it's operator to do annually.</p> <p><u>Response 2:</u> ADEQ appreciates the comment. ADEQ disagrees that Nitrate sampling should be left to systems based on Nitrate sampling compliance of non-MAP systems. ADEQ understands that the cost per sample in Nitrate-only sampling years is higher than the cost per sample in years where Nitrate sampling supplements other sampling. However, the system still pays less on average across all sampling years than the system would pay to sample without the MAP program.</p>
Article 3 Generally	<p><u>Comment 3:</u> good program. Qtr samples for exceeded would be nice.</p> <p><u>Response 3:</u> ADEQ appreciates the comment and will be investigating the feasibility of taking increased samples in a future rulemaking (subject to the governor's approval).</p>
Article 3 Generally	<p><u>Comment 4:</u> Owner should not be responsible for everything. sampler error lab error , etc</p> <p><u>Response 4:</u> ADEQ appreciates the comment. While the owner is responsible for ensuring that all required monitoring is completed prior to the end of the monitoring period, the MAP coordinator works with the contractors to correct any laboratory or reporting errors. System owners should be aware of what samples are required in any given year and should verify data against the MAP sampler chain of custody. The system representative is responsible for being on site during the sampling event and directing the samplers to the appropriate EPDS sampling taps. Any sampler errors beyond this should be brought to the attention of ADEQ's MAP coordinator to address.</p>

Article 3 Generally	<p><u>Comment 5:</u> If MAP fails to collect and analyze a specific sample the system should not be in violation. The MAP samplers need to perform a resampling event as soon as possible.</p> <p><u>Response 5:</u> ADEQ appreciates the comment. The MAP recently completed continuous improvement projects, which have significantly lowered the missed sampling of MAP samples. In the rare cases in which a sample is missed by MAP, ADEQ has a public notice template that includes language showing that the system is not at fault. Additionally, any missed monitoring violation that occurs as a result of MAP sampling does not get sent to enforcement and the samples are collected as soon as possible in the next monitoring period to return the violation to compliance. The exception to this would be if the water source is inactive or the sampling tap cannot be accessed at the time of sampling (resulting in an Exhibit E of the MAP contract). In this case the system is responsible to contact MAP to reschedule the sampling event as soon as the issue has been corrected.</p>
Article 3 Generally	<p><u>Comment 7:</u> The intent of the rule is to provide relief to small water systems when it comes to the costs of monitoring and reporting. However, the assistance is limited to baseline monitoring only and when small systems find themselves in a situation where they are put on increased monitoring, they are left on their own to incur that additional financial burden. This can lead to systems accruing missed monitoring violations because of the inability to pay for increased monitoring costs or having to cut corners on other operational and maintenance items to pay for the additional analyses. Addressing water quality exceedances is often a long and expensive process, particularly for disadvantaged water systems, and continuing to assist them with their monitoring alleviates one of their many burdens.</p> <p><u>Response 7:</u> ADEQ appreciates the comment and will be investigating the feasibility of taking increased samples in a future rulemaking (subject to the governor's approval).</p>
Article 3 Generally	<p><u>Comment 8:</u> We are a company that hires outside professionals to do our monthly testing and in our case I feel that the MAP program is simply redundant and a unnecessary financial burden to us. Companies such as ours should be given an option to opt out as long as certain criteria are met that satisfy ADEQ's requirements.</p> <p><u>Response 8:</u> ADEQ appreciates the comment and will revisit this comment in connection with an anticipated rulemaking (subject to the governor's approval) to revise the rules pertaining to the Monitoring Assistance Program. Additionally, if the system in question is serving a population of more than 10,000 people, the system may follow the existing rules for removing themselves from the program.</p>
Article 6 Generally	<p><u>Comment 1:</u> The capacity development requirements make sense for truly public facilities (those to which the general public has access) and for CWS. However, for NTNC systems serving only a place of business to which the general public does not have access, the rules are unnecessarily burdensome. APS proposes an exemption for NTNC water systems that serve only a workforce population and to which the general public is not reliant upon as a water system (nor has general</p>

	<p>access). Existing rules under the Minimum Design Criteria protocols and general rules for NTNCWS would bridge any gaps to assure clean, safe and adequate water supplies for personnel at these facilities.</p> <p><u>Response 1:</u> ADEQ appreciates the comment. ADEQ has concerns that this suggestion would not satisfy the requirements of SWDA. ADEQ would be willing to have further discussions about this proposal.</p>
Article 6 Generally	<p><u>Comment 2.1:</u> We are asking ADEQ to add flexibility to Article 6 to allow new public water systems to make use of supplemental, alternative water sources that can supply safe drinking water to the public where public water systems relying on traditional water sources regularly fail to do so.</p> <p>[The stakeholder suggests that ADEQ add the following bolded language in Appendix A Technical Capacity section:] 1. Source Adequacy - Does the documentation demonstrate that one or multiple sources combined can produce 50 gallons of water per person per day for 100 years or does the system have an Arizona Department of Water Resources Certificate of Assured Water Supply?</p> <p>[The stakeholder suggests that ADEQ add the following bolded language in Appendix B. number seven (7):] Drinking Water Sources used: (Select all that apply) Ground Water, Purchased Ground Water, Surface Water, Purchased Surface Water, Water from alternative sources, including atmospheric water and drinking water devices.</p> <p><u>Response 2.1:</u> Nothing in Article 6 precludes the use of multiple sources or alternative sources to meet the source adequacy requirement, and therefore no change is necessary. ADEQ is open to further discussion on how the rules in this Article and/or another article could be clarified further with respect to the use of multiple and alternative sources.</p> <p><u>Comment 2.2:</u> We are also asking ADEQ to include transient, non-community water systems as one of the types of public water systems regulated under Article 6. [The stakeholder suggests that ADEQ add the following bolded language in R18-4-601:] This Article applies to new CWSs and new NTNCWSs and TNCWs that begin operation on or after October 1, 1999. This Article does not apply to an existing public water system.</p> <p><u>Response 2.2:</u> ADEQ will investigate this change to determine if federal or state regulations permit inclusion of a transient non-community water system in this Article or other rules. ADEQ is required to be as stringent but not more stringent than federal regulations.</p> <p><u>Comment 2.3:</u> Finally, we are asking ADEQ to clarify that there are no capacity requirements for transient, non-community water systems. We believe the need for clean drinking water is too great to exclude water production technology from the public water system regulatory scheme solely on the basis that such technology may be limited in quantity of water produced in comparison with traditional water sources.</p>

	<p>[The stakeholder suggests that ADEQ add the following bolded language in R18–4–603:] An owner of a new, non-transient, non-community public water system shall submit the following to the Department for a determination of technical capacity: 1. Documentation of a drinking water source adequacy minimum of 50 gallons of water per person per day for a period of 100 years, a 100 year water availability designation from the Arizona Department of Water Resources (ADWR), or a Certificate of Assured Water Supply from ADWR; New public water systems may use supplemental water sources of uncertain quantity, e.g., atmospheric water generation sources, so long as the public water system is not reliant on such sources to meet all potable water needs.</p> <p><u>Response 2.3:</u> ADEQ is reviewing this comment and the regulations and will provide rule clarifications if necessary. ADEQ is open to further discussion on how the rules in this Article and/or another article could be clarified further with respect to the use of alternative sources.</p>
<p>Article 6 Generally</p>	<p><u>Comment 3.1:</u> [The stakeholder suggests that ADEQ add the following bolded language in R18–4–603(1)] “An owner of a new public water system shall submit the following to the Department for a determination of technical capacity: 1. Documentation of a drinking water source adequacy minimum of 50 gallons of water per person per day for a period of 100 years, a 100 year water availability designation from the Arizona Department of Water Resources (ADWR), or a Certificate of Assured Water Supply from ADWR; no one water source need meet the foregoing adequacy minimums as long as the total of water production from the water sources used by the new public water system meets or exceeds 50 gallons of water per person per day for a period of 100 years.</p> <p><u>Response 3.1:</u> Nothing in Article 6 precludes the use of multiple sources to meet the source adequacy requirement. ADEQ is open to further discussion on how the rules in this Article and/or another article could be clarified further with respect to the use of multiple sources.</p> <p><u>Comment 3.2:</u> [The stakeholder suggests that ADEQ add the following bolded language in Appendix A in number one (1) of the Technical Capacity section:] Source adequacy - Does the documentation demonstrate that one or multiple sources combined can produce 50 gallons of water per person per day for 100 years or does the system have an Arizona Department of Water Resources Certificate of assured water supply?</p> <p><u>Response 3.2:</u> Nothing in Article 6 precludes the use of multiple sources to meet the source adequacy requirement. ADEQ is open to further discussion on how the rules in this Article and/or another article could be clarified further with respect to the use of multiple sources.</p> <p><u>Comment 3.3:</u> [The stakeholder suggests that ADEQ add the following option in Appendix B in number seven (7):] ____ Water from alternative sources, including atmospheric water and drinking water devices.</p>

	<p><u>Response 3.3:</u> ADEQ is open to further discussion on how the rules in this Article and/or another article could be clarified further with respect to the use of multiple and alternative sources.</p>
Article 8 Generally	<p><u>Comment 1:</u> [The stakeholder suggests that ADEQ add the following bolded language in R18-4-803(B)(4):] 4. Water source (surface water, ground water, atmospheric water or drinking water devices)</p> <p><u>Response 1:</u> ADEQ is open to further discussion on how the rules in this Article and/or another article could be clarified further with respect to the use of multiple and alternative sources.</p>
Article 8 Generally	<p><u>Comment 2:</u> [The stakeholder suggests that ADEQ add the following bolded language in R18-4-803:] Master Priority List A. Each year the Department shall develop a master priority list that ranks public water systems according to their need for technical assistance. B. The Department shall rank public water systems on the master priority list based on consideration of the following criteria: 1. Size of population served 2. Type of public water system 3. Type of ownership 4. Water source (surface water, or ground water, atmospheric water or drinking water devices)</p> <p><u>Response 2:</u> ADEQ is open to further discussion on how the rules in this Article and/or another article could be clarified further with respect to the use of multiple and alternative sources.</p>

8. Economic, small business, and consumer impact comparison:

Article 1. Primary Drinking Water Regulations

ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in 2016 when the rules were most recently amended. *See* 22 A.A.R. 382-88 (Feb. 26, 2016). ADEQ believes that the qualitative assessment of the economic impacts of the rules remains accurate and any costs have been minor. ADEQ believes that the rules’ impacts on the state’s economy, small business and consumers has not changed since the effective date and the only changes would be to adjust any dollar values for costs and benefits to adjust for inflation. ADEQ regulates approximately 1,522 PWSs that serve 6,775,314 of the total 7,292,000 Arizona population (about 93%) as of June of 2021. Roughly 5-7 % of the population is served by a private well.

Article 2. State Drinking Water Regulations

ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in 2016 when the rules were most recently amended, and for R18-4-223 when it was amended in 2002. *See* 22 A.A.R. 382-88 (Feb. 26, 2016); 8 A.A.R. 985-993 (Mar. 15, 2002) ADEQ believes that the qualitative assessments of the economic impacts of the rules remains accurate and any costs have been minor. ADEQ believes that the rules’ impacts on the state’s economy, small business, and consumers has not changed since the effective date and the only changes would be to adjust any dollar values for costs and benefits to adjust for inflation.

Article 3. Monitoring and Assistance Program

ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in 2008 when the rules were amended. *See* 14 A.A.R. 2985–3007 (Aug. 1, 2008). ADEQ believes that the qualitative assessments of the economic impacts of the rules remains accurate and any costs have been minor. ADEQ believes that the impacts of the Article 3 rules on the state’s economy, small business, and consumers has not changed since the effective date and the only changes would be to adjust any dollar values for inflation. As of December 17, 2021, there are 825 active systems in MAP.

Article 6. Capacity Development Requirements for a New Public Drinking Water System

ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared when the rules were promulgated. *See* 5 A.A.R. 4457–4463 (Nov. 26, 1999). ADEQ believes that the qualitative assessment of the economic impacts of the rules remains accurate and any costs have been minor. ADEQ believes that the impacts of the Article 6 rules on the state’s economy, small business, and consumers has not changed and the only changes would be to adjust any dollar values for costs and benefits for inflation. In recent years, ADEQ has reviewed on average two applications annually.

Article 8. Technical Assistance

ADEQ described probable economic impacts in qualitative terms in the economic impact statement prepared in 2001 when the rules were promulgated. *See* 8 A.A.R. 264–65 (Jan. 11, 2002). ADEQ believes that the qualitative assessment of the economic impacts to the rule in 2001 remains accurate and any costs have been minor. ADEQ believes that the current implementation of the rules has improved the impact on the state’s economy, small business, and consumers because ADEQ has provided more technical assistance to PWSs in the form of increased dollars and expertise, which has resulted in more people drinking cleaner water. Specifically, now there are 1,517 PWSs in the fiscal year 2022 MPL. In fiscal year 2021, a total of \$1,285,084 was given out in technical assistance awards to 63 PWSs.

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?**

Rule	Explanation
Article 1: Primary Drinking Water Regulations	<p><u>Proposed course of action (2017):</u> ADEQ proposes to update R18-4-102. Incorporation by Reference of 40 CFR 141 and 142 at paragraph A to add sixteen alternative methods to Appendix A to subpart C of 40 CFR part 141, effective July 19, 2016 so that it reads as follows:</p> <p>R18-4-102. Incorporation by Reference of 40 CFR 141 and 142</p> <p>A. Unless otherwise specified in this Chapter, all references to regulations in 40 CFR 141 and 142 in this Chapter refer to the July 1, 2016, version of the regulations. Copies of the incorporated material are available for review at the Arizona Department of Environmental Quality, 1110 W. Washington St., Phoenix, AZ, 85007, and are available from the U.S. General Printing office at http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR.</p>

	<p><u>Completed:</u> No</p> <p><u>Explanation:</u> ADEQ has not incorporated the updated Alternative Test Procedures due to higher priority strategic planning and agency resource constraints. There is no risk to human health because ADEQ advises labs to use methods in the federal rules. Provided an exemption from the Rulemaking Moratorium is granted, ADEQ anticipates submitting the rulemaking to GRRC in March 2023 to incorporate the updated Alternative Test Procedures.</p>
<p>Article 1: Primary Drinking Water Regulations</p>	<p><u>Proposed Course of Action (2017):</u> By December 2021, ADEQ proposes to amend this rule to incorporate by reference Expedited Approval of Alternative Test Procedures for the Analysis of Contaminants Under the Safe Drinking Water Act: Analysis and Sampling procedure promulgated and effective on July 19, 2016, published at 81 FR 46389, and any other Alternative Test Procedures that EPA promulgates for codification in 40 CFR Parts 141 and 142 in 2017 through July 1, 2020, subject to and conditioned upon requirements in any applicable Governor’s rule moratorium and prioritization of the rulemaking workload for the Water Quality Division.</p> <p><u>Completed:</u> No</p> <p><u>Explanation:</u> ADEQ has not incorporated the updated Alternative Test Procedures due to higher priority strategic planning and agency resource constraints. There is no risk to human health because ADEQ advises labs to use methods in the federal rules. Provided an exemption from the Rulemaking Moratorium is granted, ADEQ anticipates submitting the rulemaking to GRRC in March 2023 to incorporate the updated Alternative Test Procedures.</p>
<p>Article 2: State Drinking Water Regulations</p>	<p><u>Proposed course of action (2017):</u> ADEQ believes that R18-4-208 is no longer consistent with these Special Primacy Requirements in federal law and is less stringent than EPA’s <i>Ground Water Rule</i> in 71 Fed. Reg. 65573 from November 8, 2006, and should be more specific as to factors that impact the scheduling of sanitary surveys and the frequency of surveys for community systems at least every three years. . . . ADEQ intends to submit a final rule to GRRC by December 2021.</p> <p><u>Completed:</u> No</p> <p><u>Explanation:</u> ADEQ has not updated R18-4-208 to conform to federal law due to higher priority strategic planning and agency resource constraints but ADEQ is implementing the federal law in practice. Provided an exemption from the Rulemaking Moratorium is granted, ADEQ anticipates submitting the rulemaking to GRRC in March 2023 to make the frequency requirements for sanitary surveys consistent with the Special Primacy Requirements in 40 CFR 142.16, and consistent with agency practice. ADEQ is currently complying with the federal law in practice by conducting sanitary surveys at a frequency consistent with federal law.</p>

<p>Article 3: Monitoring and Assistance Program</p>	<p><u>Proposed course of action (2017)</u>: By December 2019, ADEQ proposes to update these rules, subject to and conditioned upon requirements in any applicable Governor’s rule moratorium and prioritization of the rulemaking workload for the Water Quality Division. ADEQ is exploring the feasibility of revising the monitoring assistance program rules to provide additional assistance to small water systems for enhanced monitoring. Enhanced monitoring is required in addition to baseline monitoring when a system exceeds contaminant levels. ADEQ is also examining the feasibility of expanding the program to include assistance for distribution monitoring (i.e. testing for lead, copper, disinfection byproducts, and microbiological contaminants).</p> <p><u>Completed</u>: No</p> <p><u>Explanation</u>: ADEQ has not amended the rules due to higher priority strategic planning and agency resource constraints. In preparation for this Rule Review, ADEQ reviewed and reassessed the rules and the 2017 proposal and has determined expanding the MAP to include distribution system samples (i.e. testing for lead, copper, disinfection byproducts, and microbiological contaminants) is not feasible because sampling for these contaminants requires testing at the point of delivery (for example at a home or business), which raises potential liability issues and consequently may not be feasible for ADEQ. Contingent on A.R.S. 49-360 being amended, in September of 2023, to allow for triggered increased quarterly monitoring in addition to baseline sampling, ADEQ intends to revise the current rule to allow for enhanced monitoring when a system exceeds contaminant levels. ADEQ is fully implementing all federal law monitoring and testing requirements for water systems, and any change will allow ADEQ to provide more funding to small water systems.</p>
<p>Article 6: Capacity Development Requirements for a New Public Drinking Water System</p>	<p><u>Proposed course of action (2017)</u>: ADEQ proposes to update incorrect cross-references in R18-4-603 by 2021.</p> <p><u>Completed</u>: No</p> <p><u>Explanation</u>: Despite the inaccurate cross-reference, ADEQ has not had a problem administering Technical Capacity requirements. However, ADEQ intends to update the inaccurate cross-reference. Provided an exemption from the Rulemaking Moratorium is granted, ADEQ anticipates submitting the rulemaking to GRRC in September 2023.</p>

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:**

Rule	Explanation
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Article 1: Primary Drinking Water Regulations	The costs of the rules in Article 1 are to the water systems to treat components, sample, and analyze the samples in compliance with the National Primary Drinking Water Regulations. The benefit of these rules is that they incorporate National Primary Drinking Water Regulations, which are meant to protect public health, and they allow the state to retain primacy over SDWA. ADEQ believes that the benefits of these rules outweigh the costs because it is the state's priority to ensure drinking water quality and human health.
Article 2: State Drinking Water Regulations	The costs of the rules in Article 2 are to the water systems to treat components, sample, and analyze the samples. The benefit of the rules in Article 2 is that they ensure that systems are built and designed correctly and as a result they protect public health. ADEQ believes that the benefits outweigh the costs because it is the state's priority to ensure drinking water quality and protect human health.
Article 3: Monitoring and Assistance Program	The costs of MAP include the cost to public water systems participating in the MAP program. However, the cost is actually less expensive than what public water systems would need to pay to meet sampling requirements without the MAP program. The benefits of MAP include that MAP allows Arizona to maintain majority compliance with water systems. Another benefit of MAP is that after ADEQ uses the necessary MAP funds to complete sampling, any remaining unused funds are returned to water systems. ADEQ believes that the costs are outweighed by the benefits of MAP because without the MAP program systems would pay more to sample and the program has effectively kept systems in majority compliance.
Article 6: Capacity Development Requirements for a New Public Drinking Water System	The most significant cost of Article 6 is the source water adequacy requirement, but the rest of the EBP is planning. The benefit of this rule is to ensure that new PWSs have the technical knowledge, managerial setup, and financial resources to provide good customer service, be sustainable in the long-term, provide clean drinking water, and provide rates that are reasonable to people. Also, the rules allow the state to retain primacy over SDWA. ADEQ believes the benefits outweigh the costs because ensuring technical, managerial, and financial capacity is necessary to ensure the long-term viability of PWSs.
Article 8. Technical Assistance	There are no costs to the Technical Assistance program beyond ADEQ's staffing costs for the program. The benefits are entirely to the PWSs. ADEQ believes that the benefits clearly outweigh the costs because of the low costs of the program.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

In order for Arizona to maintain primacy (meaning primary responsibility to implement and enforce the SDWA, 42 U.S.C. § 300f et seq., within its jurisdiction), Arizona periodically revises its rules in 18 A.A.C. Chapter 4 to keep them consistent with the EPA's National Primary Drinking Water Regulations in 40 CFR 141 and 142. They are as stringent, but not more stringent, than corresponding federal rules.

Article 1. Primary Drinking Water Regulations

The rules are not more stringent than the SDWA, specifically the relevant National Primary Drinking Water Regulations in 40 CFR 141 and 142.

Article 2. State Drinking Water Regulations

Article 2 does not have a corresponding federal law.

Article 3. Monitoring and Assistance Program

The rules are consistent with and not more stringent than the sampling requirements in 40 CFR 141 pursuant to the SDWA, but the MAP program itself is specific to Arizona and there is no corresponding federal statute or regulation.

Articles 6. Capacity Development Requirements for a New Public Drinking Water System

The rules are not more stringent than the SDWA because the statute is broad and does specify a particular means of ensuring technical, managerial, and financial capacity.

Articles 8. Technical Assistance

The rules are not more stringent than the SDWA.

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 do not require permits, but instead establish applicability and general prohibitions necessary to protect public health.

14. **Proposed course of action**

ADEQ prioritizes rulemakings in terms of the greatest impact on human health. Rulemakings require significant stakeholder input from public water systems, and therefore ADEQ also prioritizes rulemakings to reduce confusion and maximize input by the public water systems. ADEQ is in the process of conducting four rulemakings for Safe Drinking Water for higher priority rulemaking updates. When those rulemakings are complete, ADEQ will conduct an additional two or three Safe Drinking Water rulemakings that are not required to protect human health but will be improvements to current regulation processes. The following table lists the prioritized Safe Drinking Water rulemakings and when they will be completed.

Lead and Copper Rule Revision	High Priority	Active Rulemaking Final to GRRC September 2023
Lead Free Ban	High Priority	Active Rulemaking Final to GRRC March 2023
Technical Updates Article 1 and 2	High Priority	Active Rulemaking Final to GRRC March 2023
Minimum Design Criteria	Medium Priority	On Hold Final to GRRC Estimated September 2023

Monitoring Assistance Program	Pending Statutory Change	Begin September 2023
Elementary Business Plan Article 6	Lower Priority	Final to GRRC September 2023
Master Priority List	Lower Priority	Final to GRRC September 2023

Article 1. Primary Drinking Water Regulations:

ADEQ anticipates a rulemaking to incorporate the most updated methods in Appendix A of Subpart C of 40 CFR 141. Provided an exemption from the Rulemaking Moratorium is granted, ADEQ anticipates submitting the rulemaking to GRRC in March 2023.

Regarding R18-4-121 (Ground Water Rule - 40 CFR 141, Subpart S), ADEQ will continue to implement the extra step in requiring consecutive systems to first sample at the interconnect tap before requiring the wholesale system to sample all of their water sources because this helps avoid unnecessary sampling for the wholesale system while protecting human health.

Article 2. State Drinking Water Regulations:

ADEQ anticipates a rulemaking for R18-4-208 to make the frequency requirements for sanitary surveys consistent with the Special Primacy Requirements in 40 CFR 142.16. In practice, ADEQ follows the EPA rule in conducting sanitary surveys for community systems at least every three years and for non-community systems at least every five years, however, the language in the rule is less stringent than the federal regulation. Also, ADEQ will amend the R18-4-215(E) to reference the updated manual. Provided an exemption from the Rulemaking Moratorium is granted, ADEQ anticipates submitting the rulemaking to GRRC in March 2023.

Article 3. Monitoring and Assistance Program:

ADEQ will not be pursuing the addition of distribution system samples (i.e. testing for lead, copper, disinfection byproducts, and microbiological contaminants) to the MAP sampling because sampling for these contaminants requires testing at the point of delivery (for example at a home or business), which raises potential liability issues and consequently may not be feasible for ADEQ. Contingent on A.R.S. 49-360 being amended by the legislature in 2023, to allow for triggered increased quarterly monitoring in addition to baseline sampling, ADEQ intends to revise the current rule to allow for enhanced monitoring when a system exceeds contaminant levels.

Articles 6. Capacity Development Requirements for a New Public Drinking Water System 6:

ADEQ is considering the following changes by rulemaking to make the Article 6 rules more effective: (1) regarding R18-4-602 (Elementary Business Plan), require approval of the EBP before approval of construction; (2) regarding R18-4-603 (Technical Capacity requirements), update the inaccurate cross reference; (3) regarding R18-4-605 (Financial Capacity Requirements), remove Appendices C and D; (4) regarding R18-4-606 (Review, Approval, Denial Process), remove subsections C and D and revise subsection E to require financial review by ADEQ. Provided an exemption from the Rulemaking Moratorium is granted, ADEQ anticipates submitting the final rulemaking to GRRC in September 2023.

Regarding R18-4-603 (Technical Capacity), ADEQ will continue to refer customers to the source adequacy guidance document for help fulfilling the source adequacy requirements.

Article 8 Technical Assistance:

ADEQ is considering the following changes by rulemaking to make the Article 8 more effective: (1) regarding R18-4-803 (Master Priority List), remove the MPL requirement or amend the MPL requirements to prioritize health based needs; (2) regarding R18-4-804 (Technical Assistance Awards), amend the rule to not require that technical assistance be provided based on the MPL. Provided an exemption from the Rulemaking Moratorium is granted, ADEQ anticipates submitting the rulemaking to GRRC in September 2023.



Replacement Check List

For rules filed within the
1st Quarter
January 1 - March 31, 2016

THE ARIZONA ADMINISTRATIVE CODE

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be 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.

Title 18. Environmental Quality

Chapter 4. Department of Environmental Quality - Safe Drinking Water

Supplement Release Quarter: 16-1

Sections, Parts, Exhibits, Tables or Appendices modified

R18-4-102, R18-4-103, R18-4-105, R18-4-121, R18-4-126, R18-4-210

REMOVE Supp. 08-3
Pages: 1 - 37

REPLACE with Supp. 16-1
Pages: 1 - 38

Agency:

The department's contact person who can answer questions about rules in Supp. 16-1:

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Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may have changed and is provided as a public courtesy.

PUBLISHER

**Arizona Department of State
Office of the Secretary of State, Public Services Division**

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
PUBLIC SERVICES DIVISION
March 31, 2016

RULES

A.R.S. § 41-1001(17) states: “‘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. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. 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 2016 is cited as Supp. 16-1.

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.

ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

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 are 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 the introduction of a chapter can be found at the Secretary of State’s website, www.azsos.gov/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 Arizona Administrative Register online at www.azsos.gov/rules, click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were 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

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. 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

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Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY - SAFE DRINKING WATER

ARTICLE 1. PRIMARY DRINKING WATER REGULATIONS

Article 1, consisting of Sections R18-4-101 through R18-4-123, adopted effective April 28, 1995 (Supp. 95-2).

Article 1, consisting of R18-4-101 through R18-4-115, recodified to 18 A.A.C. Title 5, Article 1, R18-5-101 through R18-5-115 (Supp. 95-2).

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ARTICLE 2. STATE DRINKING WATER REGULATIONS

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Article 2, consisting of Sections R18-4-201 through R18-4-290, repealed effective April 28, 1995 (Supp. 95-2).

Article 2 consisting of Sections R18-4-201 through R18-4-290, adopted effective August 8, 1991 (Supp. 91-3).

Article 2 consisting of Sections R18-4-201 through R18-4-290 and Appendices 1-7, repealed effective August 8, 1991 (Supp. 91-3).

Article 2 consisting of Sections R9-8-210 through R9-8-213, R9-8-220 through R9-8-227, R9-8-230 through R9-8-236, R9-8-250 through R9-8-253, R9-8-260 through R9-8-273, R9-8-290, and Appendices 1 through 6 renumbered as Article 2, Sections R18-4-210 through R18-4-213, R18-4-220 through R18-4-227, R18-4-230 through R18-4-236, R18-4-250 through R18-4-253, R18-4-260 through R18-4-273, R18-4-290, and Appendices 1 through 6 (Supp. 87-3).

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Article 4, consisting of Sections R18-4-401 thru R18-4-405, adopted effective April 28, 1995 (Supp. 95-2).

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Article 5 recodified to 18 A.A.C. 5, Article 5 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

Article 5, consisting of Sections R18-4-501 through R18-4-509, adopted effective April 28, 1995 (Supp. 95-2).

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Article 6, consisting of Sections R18-4-601 through R18-4-607, adopted by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

Article 6, consisting of Sections R18-4-601 through R18-4-607, adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3).

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ARTICLE 1. PRIMARY DRINKING WATER REGULATIONS**R18-4-101. Authority and Purpose**

- A.** This Chapter is created under the authority of A.R.S. Title 49, Chapter 2, Article 9, and the federal Safe Drinking Water Act, 42 U.S.C. 300f through 300j-26.
- B.** The purposes of this Chapter include the following:
1. To protect the public health and welfare by ensuring that all potable water distributed or sold to the public by public water systems is free from unwholesome, poisonous, deleterious, or other foreign substances, and filth or disease-causing substances or organisms; and
 2. To enable the state to maintain primary enforcement responsibility of the Safe Drinking Water Act, including the requirements of 40 CFR 141 and 142.

Historical Note

Former Section R9-20-504 repealed, new Section R9-20-504 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-504 amended, renumbered as Section R9-20-501, then renumbered as Section R18-4-101 effective October 23, 1987 (Supp. 87-4). R18-4-101 recodified to R18-5-101 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-102. Incorporation by Reference of 40 CFR 141 and 142

- A.** Unless otherwise specified in this Chapter, all references to regulations in 40 CFR 141 and 142 in this Chapter refer to the July 1, 2014, version of the regulations. Copies of the incorporated material are available for review at the Arizona Department of Environmental Quality, 1110 W. Washington St., Phoenix, AZ, 85007, and are available from the U.S. General Printing office at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.
- B.** A reference to a federal statute or regulation in a federal statute or regulation incorporated by reference in this Chapter shall refer to and incorporate by reference the referenced statute or regulation as of the date specified in subsection (A), unless the referenced statute or regulation is incorporated by reference elsewhere in this Chapter in a modified form, in which case the reference shall be to the statute or regulation as incorporated in this Chapter.
- C.** Documents incorporated by reference in a federal statute or regulation incorporated by reference in this Chapter are also incorporated by reference in this Chapter, as of the date specified in the federal statute or regulation.
- D.** A federal rule incorporated by reference in this Chapter shall include all “Effective Date Notes” associated with the federal rule.
- E.** The term “State” or “primacy agency” in the text of a federal statute or regulation incorporated by reference in this Chapter shall mean the Arizona Department of Environmental Quality unless otherwise noted.

Historical Note

Adopted as Section R9-20-502 and renumbered as Section R18-4-102 effective October 23, 1987 (Supp. 87-4). R18-4-102 recodified to R18-5-102 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

R18-4-103. General – 40 CFR 141, Subpart A

- A.** 40 CFR 141, Subpart A (40 CFR 141.1 through 141.6), is incorporated by reference as of the date specified in R18-4-102, except for the changes listed in this Section; this incorporation does not include any later amendments or editions.
- B.** The definition of “State” in 40 CFR 141.2 is not incorporated by reference. In addition to the terms defined in A.R.S. §§ 49-201 and 49-351, and 40 CFR 141.2, in this Chapter, unless otherwise specified, the terms listed below have the following meanings.

“Air-gap separation” means a physical separation between the discharge end of a supply pipe and the top rim of its receiving vessel of at least 1 inch or twice the diameter of the supply pipe, whichever is greater.

“ANSI/NSF Standard 60” means American National Standards Institute/NSF International Standard 60 - 2014a, Drinking Water Treatment Chemicals - Health Effects, November 17, 2014, incorporated by reference and on file with the Department. This material is available from NSF International, 789 N. Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113-0140, USA; (734) 769-8010; <http://www.nsf.org>. This incorporation by reference includes no future editions or amendments.

“ANSI/NSF Standard 61” means American National Standards Institute/NSF International Standard 61 - 2014a, Drinking Water System Components - Health Effects, October 19, 2014, incorporated by reference and on file with the Department. This material is available from NSF International, 789 N. Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113-0140, USA; (734) 769-8010; <http://www.nsf.org>. This incorporation by reference includes no future editions or amendments.

“Backflow” means a reverse flow condition that causes water or mixtures of water and other liquids, gases, or substances to flow back into the distribution system. Backflow can be created by a difference in water pressure (backpressure), a vacuum or partial vacuum (backsiphonage), or a combination of both.

“Backflow-prevention assembly” means a mechanical device used to prevent backflow.

“Capacity” means the overall capability of a water system to consistently produce and deliver water meeting all national and state primary drinking water regulations in effect when new or modified operations begin. Capacity includes the technical, managerial, and financial capacities of the water system to plan for, achieve, and maintain compliance with applicable national and state primary drinking water regulations.

“Capacity development” means improving public water system finances, management, infrastructure, and opera-

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tions, so that the public water system can provide safe drinking water consistently, reliably, and cost-effectively.

“Capacity development report” means an annual report adopted by the Department that describes progress made in improving technical, managerial, or financial capacity of public water systems in Arizona.

“Cross connection” means a physical connection between a public water system and any source of water or other substance that may lead to contamination of the water provided by the public water system through backflow.

“Distribution system” means a pipeline, appurtenance, device, and facility of a public water system that conducts water from a source or water treatment plant to persons served by the system.

“Department” means the Arizona Department of Environmental Quality.

“Double check valve assembly” means a backflow-prevention assembly that contains two independently acting check valves with tightly closing, resilient-seated shut-off valves on each end of the assembly and properly located, resilient-seated test cocks.

“Elementary business plan” means a document containing all of the items necessary for a complete review of the technical, managerial, and financial capacity of a new public water system under Article 6 of this Chapter.

“Entry point to the distribution system” means a compliance sampling point anywhere on a finished water line that is representative of a water source and located after the well, surface water intake, treatment plant, storage tank, or pressure tank, whichever is last in the process flow, but prior to where the water is discharged into the distribution system and prior to the first service connection.

“EPA” means the United States Environmental Protection Agency.

“Exclusion” means a waiver granted by the Department under R18-4-219 from a requirement of this Chapter that is not a requirement contained in a federal drinking water law.

“Exemption” means a form of temporary relief from a maximum contaminant level or treatment technique granted by the Department to a public water system, pending installation and operation of treatment facilities, acquisition of an alternate source, or completion of improvements in treatment processes to bring the system into compliance with drinking water regulations.

“Financial capacity” means the ability of a public water system to acquire and manage sufficient financial resources for the system to achieve and maintain compliance with the federal Safe Drinking Water Act.

“Groundwater system” means a public water system that is supplied solely by groundwater that is not under the direct influence of surface water.

“Lead-free” has the same meaning prescribed in A.R.S. § 49-353(B).

“Major stockholder” means a person who has 20% or more ownership interest in a public water system.

“Master priority list” means a list created by the Department that ranks public water systems according to the criteria in R18-4-803.

“Monitoring assistance program” means the program established by A.R.S. § 49-360 to assist public water systems with mandatory monitoring for contaminants and administered by the Department under 18 A.A.C. 4.

“Operational assistance” means professional or financial assistance provided to a public water system to improve the technical, managerial, or financial operations of the public water system.

“Protected water source” means a groundwater source that:

- Meets the requirements of A.A.C. R18-5-502(D);
- Is not located within 100 feet of a drywell as defined by A.R.S. § 49-331(3), and
- Is not located within 100 feet of a condition that can constitute an environmental nuisance as described in A.R.S. § 49-141(A).

“Reduced pressure principle backflow-prevention assembly” means a backflow-prevention assembly that contains two independently acting check valves; a hydraulically operating, mechanically independent pressure differential relief valve located between the two check valves; tightly closing, resilient seated shut-off valves on each end of the check valve assembly; and properly located resilient seated test cocks.

“Service connection” means a location at the meter or, in the absence of a meter, at the curbstop or building inlet.

“Service line” means the water line that runs from the corporation stop at a water main to the building inlet, including any pigtail, gooseneck, or fitting.

“State” means the Arizona Department of Environmental Quality, except during any time period during which the Department does not have primary enforcement responsibility pursuant to Section 1413 of the Act, the term “State” means the Regional Administrator of EPA Region 9.

“System evaluation assistance” means assistance provided to assess the status of the public water system's technical, managerial, and financial components, with emphasis on infrastructure status.

“Technical assistance” means operational assistance, system evaluation assistance, or both.

“Treatment” means a process that changes the quality of water by physical, chemical, or biological means.

“Treatment technique” means a treatment procedure promulgated by EPA in lieu of an MCL.

“Variance” means relief from a maximum contaminant level or treatment technique granted by the Department to a public water system when characteristics of a system's raw water source preclude the system from complying with maximum contaminant levels prescribed by drinking water regulations, despite application of best technology, treatment techniques, or other means available to the system.

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“Water main” means a pipe that is exterior to buildings and is used to distribute drinking water to more than one property.

“Water Infrastructure Finance Authority” means the entity created under A.R.S. § 49-1201 et seq. to provide financial assistance to political subdivisions, Indian tribes, and eligible drinking water facilities for constructing, acquiring, or improving wastewater treatment facilities, drinking water facilities, nonpoint source projects, and other related water quality facilities and projects.

“Water treatment plant” means a process, device, or structure used to improve the physical, chemical, or biological quality of the water in a public water system. A booster chlorination facility that is designed to maintain an effective disinfectant residual in water in the distribution system is not a water treatment plant.

- C. 40 CFR 141.4, entitled “variances and exemptions,” is incorporated by reference subject to the following modifications:
1. The phrase “entity with primary enforcement responsibility” is changed to “Department.”
 2. When reviewing and acting on requests for variances and exemptions, the Department shall act in accordance with the procedures at 42 U.S.C. 300g-4 and 300g-5 (2004) of the Act (Public Health Service Act §§ 1415 and 1416), including:
 - a. The Department shall require a public water system granted a variance under subsection (C) to comply with the requirements in a compliance schedule as expeditiously as practicable.
 - b. The Department shall promptly notify EPA of all variances and exemptions granted by the Department in the manner specified in the Act.
 - c. The Department shall enforce a schedule or other requirement on which a variance or exemption is conditioned under 42 U.S.C. 300g-3 and A.R.S. § 49-354, as if the schedule or other requirement is part of a national primary drinking water regulation incorporated by reference in this Chapter.
 - d. “Treatment technique requirement,” for the purpose of subsection (C), means a requirement in a national primary drinking water regulation which specifies for a contaminant, in accordance with 42 U.S.C. 300f(1)(C)(ii), each treatment technique known to lead to a reduction in the level of the contaminant sufficient to satisfy the requirements of 42 U.S.C. 300g-1(b).
 - e. If the Department grants a variance or exemption, the Department shall prescribe:
 - i. A compliance schedule that includes increments of progress or measures to develop an alternative source of water supply; and
 - ii. An implementation schedule that includes such control measures as the Department deems necessary for each contaminant.
- D. 40 CFR 142, 142.2, 142.20, and Subparts E, F, G, and K, are incorporated by reference as of the date specified in R18-4-102, with the following changes; this incorporation does not include any later amendments or editions. The following substitutions are to be applied in the listed order.
1. 40 CFR 142.46, 142.302, 142.313 are not incorporated by reference.
 2. 40 CFR 142.20(a), (b). The phrase “States with primary enforcement responsibility” is changed to “the Department”; the second sentences in 142.20(a) and 142.20(b) are deleted.
 3. 40 CFR 142.60(b), 142.61(b). The phrase “Administrator in a state that does not have primary enforcement responsibility or a state with primary enforcement responsibility (primacy state) that issues variances” is changed to “Department.”
 4. 40 CFR 142.40(a), (b); 142.41; 142.50(a); 142.51. The phrase “a State that does not have primary enforcement responsibility” is changed to “Arizona”.
 5. 40 CFR 142.60(b), (c), (d); 142.61(b), (c). The phrase “Administrator or [‘primacy’ or ‘primary’] state that issues variances” is changed to “Department.”
 6. 40 CFR 142.60(b), (d); 142.61(b), (d); 142.62(e), (g)(1); 142.65(a)(4). The phrase “Administrator or [the] primacy state” is changed to “Department”; the phrase “Administrator’s or primacy state’s” is changed to “Department’s.”
 7. In 40 CFR 142, Subpart K:
 - a. The phrases “[‘a’ or ‘the’] State or [the] Administrator,” “Administrator or State,” “the public water system, State and the Administrator,” and “a State exercising primary enforcement responsibility for public water systems (or the Administrator for other systems)” are changed to “the Department.”
 - b. 40 CFR 142.301. The last sentence is deleted.
 - c. 40 CFR 142.303(b). The phrase “a State exercising primary enforcement responsibility for public water systems” is changed to “the Department.”
 - d. 40 CFR 142.306(b)(2). The phrase “(or by the Administrator in States which do not have primary enforcement responsibility)” is deleted.
 - e. 40 CFR 142.308(a), 142.309(c). The phrase “the State, Administrator, or [the] public water system as directed by the State or Administrator” is changed to “the Department or the public water system, as determined by the Department.”
 - f. 40 CFR 142.308(b). The text of this subsection is replaced by the following: “At the time of proposal, the Department must publish a notice in the *Arizona Administrative Register* or a newspaper or newspapers of wide circulation in the affected region of the State. This notice shall include the information listed in paragraph (c) of this section.”
 - g. 40 CFR 142.308(c)(7). The phrase “the primacy agency” is changed to “the Department.”
 8. In all parts of 40 CFR 142 incorporated by reference other than Subpart K, the term “Administrator” is changed to “Department”; the pronoun “he” is changed to “the Department”; and the pronoun “his” is changed to “the Department’s.”
 9. In all parts of 40 CFR 142 incorporated by reference, the term “a state” or “the state” is changed to “the Department”; the term “the State’s” is changed to “the Department’s.”
 10. 40 CFR 142.62(h)(3). The term “State-approved” is changed to “Department-approved.”
 11. In 40 CFR 142.44(b). The text of this subsection is replaced by the following: “Public notice of an opportunity for hearing on a variance schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed schedule, and shall meet the notice requirements of A.A.C. R18-1-401.”
 12. In 40 CFR 142.54(b). The text of this subsection is replaced by the following: “Public notice of an opportunity for hearing on an exemption schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed schedule,

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and shall meet the notice requirements of A.A.C. R18-1-401.”

13. 40 CFR 142.44(d), 142.54(d). The third, fourth, and fifth sentences of these subsections are deleted.
 14. 40 CFR 142.44(e), 142.54(e). The text of these subsections is replaced by the following: “A hearing convened pursuant to paragraph (d) of this section shall be conducted according to the procedural requirements of A.A.C. R18-1-402.”
- E. 40 CFR 141.5 is not incorporated by reference.

Historical Note

Former Section R9-20-505 repealed, new Section R9-20-505 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-505 amended, renumbered as Section R9-20-503, then renumbered as Section R18-4-103 effective October 23, 1987 (Supp. 87-4). R18-4-103 recodified to R18-5-103 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-103 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

R18-4-104. Maximum Contaminant Levels – 40 CFR 141, Subpart B

40 CFR 141, Subpart B (40 CFR 141.11 through 141.13), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Former Section R9-20-506 repealed, new Section R9-20-506 adopted effective November 1, 1979 (Supp. 79-6). Amended effective March 19, 1980 (Supp. 80-2). Former Section R9-20-506 amended, renumbered as Section R9-20-504, then renumbered as Section R18-4-104 effective October 23, 1987 (Supp. 87-4). R18-4-104 recodified to R18-5-104 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Amended under R1-1-109(B) to correct a manifest clerical error; subsection R18-4-104(J)(3) moved to its proper place as subsection R18-4-104(K)(3); compare at 8 A.A.R. 3086, July 26, 2002 (Supp. 03-1). Section R18-4-104 renumbered to R18-4-211; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-105. Monitoring and Analytical Requirements – 40 CFR 141, Subpart C

- A. 40 CFR 141, Subpart C (40 CFR 141.21 through 141.29 and Appendix A), is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions.
- B. 40 CFR 141.21(c)(2), 141.21(d) and 141.21(f) are not incorporated by reference.
- C. 40 CFR 141.22: the last sentence of 141.22(a) is replaced by the following: “Turbidity measurements shall be made using analytical methods approved by EPA and the Arizona Department of Health Services.”

- D. 40 CFR 141.23(k) is not incorporated by reference.
- E. 40 CFR 141.24(f)(17), 141.24(f)(20), and 141.24(h)(19) are not incorporated by reference.
- F. 40 CFR 141.25: the following text replaces the text of 40 CFR 141.25(a) and (b): “Analysis for the following contaminants shall be conducted to determine compliance with 40 CFR 141.66 (radioactivity) using analytical methods approved by EPA and the Arizona Department of Health Services:
 1. Naturally occurring contaminants: gross alpha and beta, gross alpha, radium 226, radium 228, and uranium.
 2. Man-made contaminants: radioactive cesium, radioactive iodine, radioactive strontium 89, 90, tritium, and gamma emitters.”
- G. 40 CFR 141.27, alternate analytical techniques, is not incorporated by reference; the following text is substituted in its place: “The use of an alternate analytical technique approved by EPA and the Arizona Department of Health Services shall not decrease the frequency of monitoring required by this Chapter.”
- H. 40 CFR 141.28:
 1. In 40 CFR 141.28(a), the term “State” is changed to “Arizona Department of Health Services.”
 2. In 40 CFR 141.28(b), the term “State” is changed to “Arizona Department of Health Services or Arizona Department of Environmental Quality.”
 3. A new subsection (c) is added: “A laboratory that performs drinking water analysis in Arizona shall be certified by EPA or the Arizona Department of Health Services.”

Historical Note

Former Section R9-20-507 repealed, new Section R9-20-507 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-507 amended, renumbered as Section R9-20-505, then renumbered as Section R18-4-105 effective October 23, 1987 (Supp. 87-4). R18-4-105 recodified to R18-5-105 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section repealed by final rulemaking at 8 A.A.R. 3046, effective May 6, 2002 (Supp. 02-3). New Section R18-4-105 renumbered from R18-4-105.01 at 8 A.A.R. 2756, effective June 6, 2002 (Supp. 02-3). Subsection citation in part 4 of Table 2 corrected (Supp. 04-1). Section R18-4-105 and Tables 1 through 4 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

R18-4-105.01. Renumbered**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3046, effective May 6, 2002 (Supp. 02-3). Section renumbered to R18-4-105 at 8 A.A.R. 2756, effective June 6, 2002 (Supp. 02-3).

R18-4-106. Reporting and Recordkeeping – 40 CFR 141, Subpart D

- A. 40 CFR 141, Subpart D (40 CFR 141.31 through 141.35), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions. The requirements in the following subsections are in addition to the requirements of 40 CFR 141, Subpart D.
- B. Department reporting forms. A public water system shall report to the Department the results of all analyses completed under this Chapter on Department-approved forms.

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- C. Direct reporting. A public water system may contract with a laboratory or another agent to report monitoring results to the Department, but the public water system remains legally responsible for compliance with reporting requirements.

Historical Note

Adopted effective March 19, 1980 (Supp. 80-2). Former Section R9-20-508 amended, renumbered as Section R9-20-506, then renumbered as Section R18-4-106 effective October 23, 1987 (Supp. 87-4). Amended subsection (F) effective November 30, 1988 (Supp. 88-4). R18-4-106 recodified to R18-5-106 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-106 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

- R18-4-107. Special Regulations, Including Monitoring Regulations and Prohibition on Lead Use – 40 CFR 141, Subpart E** 40 CFR 141, Subpart E (40 CFR 141.40 through 141.43), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Former Section R9-20-509 repealed, new Section R9-20-509 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-509 amended, renumbered as Section R9-20-507, then renumbered as Section R18-4-107 effective October 23, 1987 (Supp. 87-4). Amended subsection (B) effective November 30, 1988 (Supp. 88-4). R18-4-107 recodified to R18-5-107 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-107 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

- R18-4-108. Maximum Contaminant Level Goals and Maximum Residual Disinfectant Level Goals – 40 CFR 141, Subpart F**

40 CFR 141, Subpart F (40 CFR 141.50 through 141.55), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Former Section R9-20-510 repealed, new Section R9-20-510 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-510 amended, renumbered as Section R9-20-508, then renumbered as Section R18-4-108 effective October 23, 1987 (Supp. 87-4). Amended subsection (D) effective November 30, 1988 (Supp. 88-4). R18-4-108 recodified to R18-5-108 (Supp. 95-2). New Section R18-4-108 renumbered from R18-4-109 and amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-108 renumbered to R18-4-205; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

- R18-4-109. Primary Drinking Water Regulations: Maximum Contaminant Levels and Maximum Residual Disinfectant Levels – 40 CFR 141, Subpart G**

40 CFR 141, Subpart G (40 CFR 141.60 through 141.66), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Former Section R9-20-511 repealed, new Section R9-20-511 adopted effective November 1, 1979 (Supp. 79-6).

Former Section R9-20-511 amended, renumbered as Section R9-20-509, then renumbered as Section R18-4-109 effective October 23, 1987 (Supp. 87-4). R18-4-109 recodified to R18-5-109 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Former Section R18-4-109 renumbered to R18-4-108; new Section R18-4-109 made by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-109 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

- R18-4-110. Filtration and Disinfection – 40 CFR 141, Subpart H**

- A. 40 CFR 141, Subpart H (40 CFR 141.70 through 141.76), is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions.
- B. The text of 40 CFR 141.74(a) is replaced by the following: “*Analytical requirements.* In order to demonstrate compliance with the requirements of this Part, public water systems shall use analytical methods approved by EPA and the Arizona Department of Health Services for monitoring under this Part.”

Historical Note

Former Section R9-20-512 repealed, new Section R9-20-512 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-512 amended, renumbered as Section R9-20-510, then renumbered as Section R18-4-110 effective October 23, 1987 (Supp. 87-4). Amended subsection (B) effective November 30, 1988 (Supp. 88-4). R18-4-110 recodified to R18-5-110 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-110 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

- R18-4-111. Control of Lead and Copper – 40 CFR 141, Subpart I**

- A. 40 CFR 141, Subpart I (40 CFR 141.80 through 141.91), is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions.
- B. The first sentence of 40 CFR 141.89(a) is replaced by the following: “Analyses for lead, copper, pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature shall be conducted using analytical methods approved by EPA and the Arizona Department of Health Services. Analyses under this section for lead and copper shall be conducted by laboratories that have been certified by EPA or the Arizona Department of Health Services.”
- C. The text of 40 CFR 141.89(a)(1) is not incorporated by reference.

Historical Note

Adopted as Section R9-20-511 and renumbered as Section R18-4-111 effective October 23, 1987 (Supp. 87-4). R18-4-111 recodified to R18-5-111 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-111 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-112. Use of Non-Centralized Treatment Devices – 40 CFR 141, Subpart J

40 CFR 141.101 is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Former Section R9-20-517 repealed, new Section R9-20-517 adopted effective November 1, 1979 (Supp. 79-6). Amended effective March 19, 1980 (Supp. 80-2). Former Section R9-20-517 amended, renumbered as Section R9-20-512, then renumbered as Section R18-4-112 effective October 23, 1987 (Supp. 87-4). R18-4-112 recodified to R18-5-112 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-112 renumbered to R18-4-219; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-113. Treatment Techniques – 40 CFR 141, Subpart K
40 CFR 141, Subpart K (40 CFR 141.110 through 141.111), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted as Section R9-20-513 and renumbered as Section R18-4-113 effective October 23, 1987 (Supp. 87-4). Amended subsections (A) and (C) effective November 30, 1988 (Supp. 88-4). R18-4-113 recodified to R18-5-113 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-113 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-114. Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors – 40 CFR 141, Subpart L

- A. 40 CFR 141, Subpart L (40 CFR 141.130 through 141.135), is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions.
- B. 40 CFR 141.131 is not incorporated by reference.
- C. In order to demonstrate compliance with the requirements of this Chapter:
1. Public water systems shall use analytical methods approved by EPA and the Arizona Department of Health Services for monitoring under this Chapter; and
 2. Analyses of drinking water samples shall be conducted by laboratories that have been certified by EPA or the Arizona Department of Health Services.
- D. A party approved by the Department shall measure daily chlorine samples at the entrance to the distribution system.
- E. A public water system may measure residual disinfectant concentrations for chlorine, chloramines, and chlorine dioxide by using N,N-diethyl-p-phenylenediamine (DPD) colorimetric test kits. A party approved by the Department shall measure residual disinfectant concentration.

Historical Note

Former Section R9-20-519 repealed, new Section R9-20-519 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-519 amended, renumbered as Section R9-20-514, then renumbered as Section R18-4-114 effective October 23, 1987 (Supp. 87-4). R18-4-114 recodified to R18-5-114 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-114 renumbered to R18-4-202; new Section made by final rulemaking at 14 A.A.R. 2978, effective August

30, 2008 (Supp. 08-3).

R18-4-115. Renumbered**Historical Note**

Former Section R9-20-520 repealed, new Section R9-20-520 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-520 amended, renumbered as Section R9-20-515, then renumbered as Section R18-4-115 effective October 23, 1987 (Supp. 87-4). R18-4-115 recodified to R18-5-115 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-115 renumbered to R18-4-215 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-116. Renumbered**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-116 renumbered to R18-4-204 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-117. Consumer Confidence Reports – 40 CFR 141, Subpart O

40 CFR 141, Subpart O (40 CFR 141.151 through 141.155 and Appendix A), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-117 renumbered to R18-4-209; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-118. Enhanced Filtration and Disinfection - Systems Serving 10,000 or More People – 40 CFR 141, Subpart P

40 CFR 141, Subpart P (40 CFR 141.170 through 141.175), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-118 renumbered to R18-4-208; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-119. Public Notification of Drinking Water Violations – 40 CFR 141, Subpart Q

40 CFR 141, Subpart Q (40 CFR 141.201 through 141.211 and Appendices A, B, and C), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Former Section R18-4-215 renumbered R18-4-119 pursuant to R1-1-404 effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-119 renumbered to R18-4-213; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-120. Renumbered**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective December 8, 1998 (Supp. 98-4). Section R18-4-

120 renumbered to R18-4-206 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-121. Ground Water Rule – 40 CFR 141, Subpart S

- A. 40 CFR Part 141, Subpart S (40 CFR 141.400 through 141.405), is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions.
- B. 40 CFR 141.402(a)(4) is modified as follows:
Consecutive and wholesale systems.
- (i) In addition to the other requirements of this paragraph (a), a consecutive ground water system that has a total coliform-positive sample, collected under § 141.21(a) until March 31, 2016 or under §§ 141.854 through 141.857 beginning April 1, 2016, within 24 hours of being notified of the total coliform-positive sample must:
 - (A) Notify the wholesale system(s) and,
 - (B) Collect a sample from its consecutive connection with the wholesale ground water system and analyze it for a fecal indicator under paragraph (c) of this section.
 - (ii) If the sample collected under paragraph (a)(4)(i)(B) of this section is fecal indicator-positive, within 24 hours:
 - (A) The consecutive system must notify the wholesale ground water system, and
 - (B) Both systems must consult with the Department on additional sampling to meet the requirements of paragraph (a)(3) of this section.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-121 renumbered to R18-4-201; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

R18-4-122. Enhanced Filtration and Disinfection – Systems Serving Fewer Than 10,000 People – 40 CFR 141, Subpart T
40 CFR 141, Subpart T (40 CFR 141.500 through 141.571), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-122 renumbered to R18-4-207; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

Appendix A. Renumbered

Historical Note

New Appendix made by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Appendix A repealed; new Appendix A made by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Appendix A renumbered to a position after R18-4-125 at 8 A.A.R. 2756, effective June 6, 2002 (Supp. 02-3).

R18-4-123. Initial Distribution System Evaluations – 40 CFR 141, Subpart U

40 CFR 141, Subpart U (40 CFR 141.600 through 141.605), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-123 renumbered to R18-4-216; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-124. Stage 2 Disinfection Byproducts Requirements – 40 CFR 141, Subpart V

40 CFR 141, Subpart V (40 CFR 141.620 through 141.629), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted effective February 9, 1996 (Supp. 96-1). Section R18-4-124 renumbered to R18-4-203; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-125. Enhanced Treatment For *Cryptosporidium* – 40 CFR 141, Subpart W

40 CFR 141, Subpart W (40 CFR 141.700 through 141.723), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted effective February 9, 1996 (Supp. 96-1). Section R18-4-125 renumbered to R18-4-214; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-126. Revised Total Coliform Rule 40 CFR Part 141, Subpart Y

- A. 40 CFR Part 141, Subpart Y (40 CFR 141.851 through 141.861), is incorporated by reference as of the date specified in R18-4-102, subject to modifications specified in this Section; this incorporation does not include any later amendments or editions.
- B. 40 CFR 141.851(d), 141.852, 141.853(c)(2), and 141.854(h)(2)(i) – (ii) are not incorporated by reference.

Historical Note

New Section made by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

Appendix A. Repealed

Historical Note

Appendix A renumbered from a position after R18-4-122 to a position after R18-4-125 at 8 A.A.R. 2756, effective June 6, 2002 (Supp. 02-3). Subsection citation in Appendix A corrected (Supp. 04-1). Appendix A repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

ARTICLE 2. STATE DRINKING WATER REGULATIONS

R18-4-201. Enforcement

- A. A water supplier who constructs, operates, or maintains a public water system contrary to the provisions of this Chapter or fails to maintain the quality of water within the public water system as required by this Chapter is subject to the actions provided in A.R.S. §§ 49-142 and 49-354.
- B. If the Department determines that a public water system is not in compliance with any of the provisions of this Chapter, the Department may issue an order to the water supplier that requires the public water system to make no further service connections or that limits the number of service connections until the Department determines that the public water system achieves compliance.
- C. The Department may determine compliance or initiate enforcement action based upon analytical results and other

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information compiled by the Department or other federal, state, or local agencies.

- D. The Department shall round compliance data to the same number of significant figures as the MCL in question to determine compliance with the MCL.

Historical Note

Former Section R9-8-212 repealed, new Section R9-8-212 adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended effective November 2, 1982 (Supp. 82-6). Amended by renumbering subsections (P) thru (W) as (Q) thru (X) and adding a new subsection (P) effective January 6, 1984 (Supp. 84-1). Former Section R9-8-212 renumbered without change as Section R18-4-212 (Supp. 87-3). Former Section R18-4-212 amended and renumbered as Section R18-4-201 effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-201 repealed; new Section renumbered from R18-4-121 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-202. Certified Operators

A water supplier of a public water system shall ensure that:

1. The water system is operated in accordance with 18 A.A.C. 5, Article 1.
2. The water system is operated by an operator who is properly certified pursuant to 18 A.A.C. 5, Article 1, to operate each water treatment plant in the system and the distribution system.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-202 repealed; new Section renumbered from R18-4-114 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-203. Operation and Maintenance

A water supplier shall maintain and keep in proper operating condition all facilities used in production, treatment, and distribution of the water supply so as to comply with the requirements of this Chapter and 18 A.A.C. 5.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-203 renumbered to R18-4-210; new Section renumbered from R18-4-124 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-204. Emergency Operation Plans

- A. The water supplier for a community water system shall develop and keep an emergency operations plan in an easily accessible location. At a minimum, the emergency operations plan shall detail the steps that the community water system will take to assure continuation of service in the following emergency situations:

1. Loss of a source;
2. Loss of water supply due to major component failure;
3. Damage to power supply equipment or loss of power;
4. Contamination of water in the distribution system from backflow;

5. Collapse of a reservoir, reservoir roof, or pumphouse structure;
6. A break in a transmission or distribution line; and
7. Chemical or microbiological contamination of the water supply.

- B. The emergency operations plan required by subsection (A) shall address all of the following:

1. Provision of alternate sources of water during the emergency;
2. Notice procedures for regulatory agencies, news media, and users;
3. Disinfection and testing of the distribution system once service is restored;
4. Identification of critical system components that shall remain in service or be returned to service quickly;
5. Critical spare parts inventory; and
6. Staff training in emergency response procedures.

- C. In the event that an emergency situation that is listed in subsection (A) occurs, the Emergency Operation Plan shall be implemented by the community water system.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-204 repealed; new Section renumbered from R18-4-116 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-205. Sample Collection, Preservation, and Transportation

A public water system shall collect each sample using the sample preservation, container, and maximum holding time procedure prescribed by the Arizona Department of Health Services in 9 A.A.C. 14, Article 6, and approved by EPA for the analytical method used.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-205 repealed; new Section renumbered from R18-4-108 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-206. Monitoring and Sampling by the Department and MAP Contractors

- A. The Department may take samples from a public water system. If the Department takes a sample at a public water system, the Department shall forward a copy of the analytical results to the water supplier.
- B. If a public water system fails to monitor, the Department may monitor to determine compliance with MCLs. A public water system shall not use Department monitoring to satisfy monitoring requirements prescribed by this Chapter. This subsection does not apply to monitoring under the monitoring assistance program.
- C. A contractor shall take compliance samples for the categories of contaminants listed in A.R.S. § 49-360(A) for a public water system that participates in the monitoring assistance program.
- D. The sampling location for chemical contaminants must be the entry point to the distribution system or the compliance monitoring point specified by the Department, unless otherwise specified in this Chapter. An entry point to a distribution system is the point at which water is discharged into the distribution system from a well, storage tank, pressure tank, or water treatment plant.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4). Section R18-4-206

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repealed; new Section renumbered from R18-4-120 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-207. Entry and Inspection of Public Water Systems

- A. A Department inspection shall comply with A.R.S. § 41-1009.
- B. 40 CFR 142.34(a) is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions. The phrase “Administrator” is changed to “Department.”

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 5067, effective October 16, 2001 (Supp. 01-4). Section R18-4-207 repealed; new Section renumbered from R18-4-122 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-208. Sanitary Surveys

- A. Each public water system shall undergo sanitary surveys in accordance with a schedule established by the Department, or when the Department determines that a sanitary survey is necessary to assure compliance with this Chapter.
- B. A sanitary survey shall be performed for a public water system at least once every five years; however, a non-community water system using only protected and disinfected ground water shall have a sanitary survey performed at least every 10 years.
- C. When establishing a sanitary survey schedule or determining that a sanitary survey is required prior to the next scheduled sanitary survey, the Department shall consider:
 1. The quality and quantity of the source water; and
 2. Whether the system is properly designed, maintained and operated.
- D. Proper operation and maintenance means operating and maintaining the public water system in compliance with this Chapter; 18 A.A.C. 5, Article 5; and in conformance with the applicable portions of Engineering Bulletin No. 10, “Guidelines for the Construction of Water Systems,” incorporated by reference in A.A.C. R18-5-502.
- E. The Department shall review the results of a sanitary survey to determine whether the existing monitoring frequency is adequate, and whether any additional measures are required in order to ensure that the system will remain in compliance with this Chapter.
- F. In conducting a sanitary survey of a groundwater system, information on sources of contamination within a delineated wellhead protection area shall be considered by the Department instead of collecting new information, if the information was collected since the last time the system was subject to a sanitary survey.
- G. A water supplier shall make the changes to the design, operation, and maintenance of the public water system specified by the Department in order to bring the system into compliance with the requirements of this Chapter, and shall make the changes within the time limits set by the Department.
- H. A sanitary survey of a public water system shall be made by a representative of the Department, a professional engineer or sanitarian who is registered in Arizona, a certified water system operator, or other person approved by the Department.
- I. A sanitary survey shall comply with A.R.S. § 41-1009 when conducted by the Department.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-208

repealed; new Section renumbered from R18-4-118 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-209. Unsafe Supplies

The Department may order a public water system to disconnect a source to protect the public health from an acute health risk that is attributable to the source. An acute health risk is posed when one of the following occurs:

1. A violation of a MCL for total coliform and fecal coliform or *E. coli* are present that is attributable to the source,
2. A violation of the MCL for nitrate or nitrite that is attributable to the source, or
3. An occurrence of a waterborne disease outbreak that is attributable to the source.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 7 A.A.R. 5067, effective October 16, 2001 (Supp. 01-4). Section R18-4-209 repealed; new Section renumbered from R18-4-117 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-210. Total Coliform; Special Events

- A. A water system that does not meet the definition of a public water system, but serves a large number of persons for a short duration of time, such as a special event, must take corrective action as required in R18-4-126 after receiving a positive coliform result, including taking additional samples until all samples test negative for total coliform and negative for *E. coli* if:
 1. The total number of user-days exceeds 600.
 2. A user-day is calculated by multiplying the number of days the event will run by the average number of persons expected to be served each day.
- B. The water system shall submit a minimum of two sample results to the Department at least seven days before the beginning of the special event. The water system shall submit a minimum of one additional sample result to the Department for each day of the special event.

Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended subsection (C) and added subsection (D) effective January 6, 1984 (Supp. 84-1). Former Section R9-8-210 renumbered without change as Section R18-4-210 (Supp. 87-3). Repealed effective June 30, 1989 (Supp. 89-2). New Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section repealed by final rulemaking at 8 A.A.R. 3046, effective May 6, 2002 (Supp. 02-3). New Section R18-4-210 renumbered from R18-4-203 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

R18-4-211. Reporting Requirements

- A. Cross connection incidents. A public water system shall submit a written cross connection incident report to the Department and the local county health department within five days of the occurrence of a cross connection problem that results in contamination of water provided by the public water system. The report shall address all of the following:
 1. Date and time of discovery of the cross connection incident,

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2. Nature of the cross connection incident,
 3. Affected area,
 4. Cause of the cross connection incident,
 5. Public health impact,
 6. Date and text of any public health advisory issued,
 7. Corrective action taken, and
 8. Date of completion of corrective action.
- B. Emergencies.** A public water system shall notify the Department, by telephone or facsimile, as soon as possible but no later than 24 hours after the occurrence of any of the following emergencies:
1. Loss of water supply from a source;
 2. Loss of water supply due to major component failure;
 3. Damage to power supply equipment or loss of power;
 4. Contamination of water in the distribution system from backflow;
 5. Collapse of a reservoir, reservoir roof, or pumphouse structure;
 6. Break in a transmission or distribution line that results in a loss of service to customers for more than four hours; and
 7. Chemical or microbiological contamination of the water supply.
- C. Waterborne disease outbreak.** A public water system shall report to the Department the occurrence of a waterborne disease outbreak that may be attributable to water provided by the public water system as soon as possible but no later than 24 hours after the public water system receives actual notice of the waterborne disease outbreak.
- D. Department requests for records.** A public water system shall submit to the Department, within the time stated in the Department's request, copies of any records that the public water system is required to retain under this Chapter or copies of any documents that the Department is entitled to inspect under 42 U.S.C. 300j-4 (2001).
- E. Department reporting forms.** A public water system shall report to the Department the results of all analyses completed under this Chapter on Department-approved forms.
- F. Direct reporting.** A public water system may contract with a laboratory or another agent to report monitoring results to the Department, but the public water system remains legally responsible for compliance with reporting requirements.
- G. Forty eight-hour reporting requirement.** A public water system shall report the failure to comply with any of the provisions of this Chapter to the Department within 48 hours, except where a different reporting period is specified in this Chapter.
3. A radial well collector, Ranney well, or horizontal well;
 4. A well that is less than 500 feet from a surface water, and:
 - a. The Department conducts a vulnerability assessment and determines that the source is vulnerable to direct surface water influence, or
 - b. The Department cannot assess the vulnerability of the groundwater source to direct surface water influence because of a lack of information or the uncertainty of available information on the local hydrogeology or well construction characteristics;
 5. A shallow well with perforations or well screens that are less than 50 feet below the ground surface;
 6. A hand-dug or auger-bored well without a casing;
 7. A groundwater source for which turbidity data is available that shows that the groundwater violates an interim MCL for turbidity;
 8. A groundwater source for which data is available that shows that total coliform, fecal coliform, or *E. Coli* are present in untreated groundwater from the source that are not related to new well development, source modification, repair, or maintenance; and
 9. Any groundwater source if the temperature of the groundwater fluctuates 15% to 20% from the mean groundwater temperature over the course of a year or if changes in the temperature of the groundwater correlate to similar changes in the temperature of surface water.
- B.** The Department shall conduct a sanitary survey of each public water system that the Department suspects is using a groundwater source under the direct influence of surface water.
- C.** The Department shall provide written notice to a public water system that the Department suspects a groundwater source is under the direct influence of surface water. A public water system may submit information to the Department to show that a groundwater source is not under the direct influence of surface water. Information that is submitted to show that a suspect groundwater source is not under the direct influence of surface water shall be in writing and shall be prepared by a qualified professional, such as a professional engineer registered in Arizona, registered geologist, water system operator, or hydrogeologist. The Department shall review any information submitted by a qualified professional to show a suspect groundwater source is not under the direct influence of surface water within 90 days after receipt of the information and determine if the source remains suspect.
- D.** If a groundwater source continues to be suspect after the analyses required in subsections (A) through (C), the Department may require a public water system that is suspected of using a groundwater source that is under the direct influence of surface water to conduct Microscopic Particle Analysis (MPA) monitoring of the groundwater source. A public water system may request that the Department allow the system to use an alternative method to determine whether a groundwater source is under the direct influence of surface water. An alternative method to determine whether a groundwater source is under the direct influence of surface water shall be approved by the Arizona Department of Health Services under 9 A.A.C. 14, Article 6.
- E.** A public water system shall conduct MPA monitoring as follows:
1. Each sample shall be representative of the groundwater source. A public water system shall not take a sample of blended water or a sample of water from the distribution system.
 2. Each sample shall be collected and analyzed according to the procedures prescribed in the "Consensus Method for Determining Groundwaters Under the Direct Influence of

Historical Note

Corrected A.R.S. reference (Supp. 77-3). Amended effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-211 renumbered without change as Section R18-4-211 (Supp. 87-3). Amended effective Dec. 1, 1988 (Supp. 88-4). Repealed effective June 30, 1989 (Supp. 89-2). New Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-211 repealed; new Section renumbered from R18-4-104 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-212. Groundwater Under the Direct Influence of Surface Water

- A.** The Department suspects the following sources to be groundwater under the direct influence of surface water:
1. A spring;
 2. An infiltration gallery;

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Surface Water Using Microscopic Particulate Analysis (MPA),” EPA 910/9-92-029, United States Environmental Protection Agency, Environmental Services Division, Manchester Environmental Laboratory, 7411 Beach Dr. E., Port Orchard, WA 98366, October 1992 (and no future editions or amendments), which is incorporated by reference and on file with the Department.

3. The Department shall schedule MPA monitoring at a time when the groundwater source is most susceptible to direct surface water influence.
4. The Department shall use the MPA risk ratings in Table 1 to determine whether groundwater is under the direct influence of surface water.
 - a. If the MPA risk rating of the initial sample indicates a high or moderate risk of direct surface water influence, the public water system shall collect a second sample for MPA at the same location on a date scheduled by the Department. If the MPA risk rating of the second sample indicates a high or moderate risk of direct surface water influence, the Department shall determine that the groundwater is under the direct influence of surface water. If the risk rating of the second sample indicates a low risk of direct surface water influence, the public water system shall collect a third sample for MPA at the same location on a date scheduled by the Department. If a third sample is taken, the Department shall determine whether the groundwater is under the direct influence of surface water under subsection (E)(4)(c).
 - b. If the MPA risk rating of the initial sample indicates a low risk of direct surface water influence, the public water system shall collect a second sample for MPA at the same location on a date scheduled by the Department. If the MPA risk rating of the second sample indicates a low risk of direct surface water influence, the Department shall determine that the groundwater is not under the direct influence of surface water. If the MPA risk rating of the second sample indicates a high or moderate risk of direct surface water influence, the public water system shall collect a third sample for MPA at the same location on a date scheduled by the Department. If a third sample is taken, the Department shall determine whether the groundwater is under the direct influence of surface water under subsection (E)(4)(c).
 - c. If a third sample is required and the MPA risk rating of the third sample indicates a high or moderate risk of direct surface water influence, the Department shall determine that the groundwater is under the direct influence of surface water. If the MPA risk rating of the third sample indicates a low risk of direct

surface water influence, the Department shall determine that the groundwater is not under the direct influence of surface water.

- F. If the Department determines a source to be groundwater under the direct influence of surface water under subsection (E) and a public water system demonstrates to the Department that it is feasible to take corrective action to prevent direct surface water influence, the Department shall establish a schedule of compliance for the public water system to take corrective action instead of requiring installation of filtration and disinfection treatment. A schedule of compliance to take corrective action shall require:
 1. Completion of corrective action no later than 18 months after receipt of the initial MPA monitoring results, and
 2. A second round of MPA monitoring to determine whether the source is under the direct influence of surface water after completion of the corrective action.
- G. Except as provided in subsection (F), a public water system with a source that the Department determines to be groundwater under the direct influence of surface water shall provide filtration and disinfection required under 40 CFR 141 Subparts H, P, and T, as incorporated by reference in this Chapter, within 18 months after the date that the Department makes the final determination that the groundwater is under the direct influence of surface water.
- H. The Department shall provide a written notice to a public water system of a final determination that a groundwater source is under the direct influence of surface water. The notice shall contain the information required by A.R.S. § 41-1092.03(A).
- I. A public water system may appeal a final determination that a groundwater source is under the direct influence of surface water by serving notice of appeal with the Department under the Uniform Administrative Hearing Procedures in A.R.S. Title 41, Chapter 6, Article 10. A public water system shall file notice of appeal with the Department within 30 days after receiving notice of the Department’s determination that a groundwater source is under the direct influence of surface water. The Department shall notify the Office of Administrative Hearings which shall schedule a hearing on the appeal within 60 days after the date that notice of appeal is filed with the Department. Hearings shall be conducted according to the Uniform Administrative Hearing Procedures in A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4).

Section R18-4-212 repealed; new Section renumbered from R18-4-301.01 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

Table 1. Decision Matrix for Determining Groundwater Under the Direct Influence of Surface Water

Initial Sample MPA Risk Rating	Second Sample MPA Risk Rating	Third Sample MPA Risk Rating	Groundwater Under the Direct Influence of Surface Water
High	High or Moderate		Yes
High	Low	High or Moderate	Yes
High	Low	Low	No
Moderate	High or Moderate		Yes
Moderate	Low	High or Moderate	Yes
Moderate	Low	Low	No
Low	High or Moderate	High or Moderate	Yes
Low	High or Moderate	Low	No
Low	Low		No

Historical Note

New Table 1 renumbered from R18-4-301.01, Table 1 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-213. Standards for Additives, Materials, and Equipment

- A. Each product added directly to water during production or treatment shall conform to ANSI/NSF Standard 60. Products covered by this subsection include but are not limited to:
 1. Coagulation and flocculation chemicals;
 2. Chemicals for corrosion and scale control;
 3. Chemicals for softening, precipitation, sequestering, and pH adjustment;
 4. Disinfection and oxidation chemicals;
 5. Chemicals for fluoridation, defluoridation, algae control, and dechlorination;
 6. Dyes and tracers;
 7. Antifreezes, antifoamers, regenerants, and separation process scale inhibitors and cleaners; and
 8. Water well drilling and rehabilitation aids.
- B. Except as identified in subsections (D) and (E), a material or product installed after January 1, 1993, that comes into contact with water or a water treatment chemical shall conform to ANSI/NSF Standard 61. Products and materials covered by this subsection include but are not limited to:
 1. Process media, such as carbon and sand;
 2. Joining and sealing materials, such as solvents, cements, welding materials, and gaskets;
 3. Lubricants;
 4. Pipes and related products, such as tanks and fittings;
 5. Mechanical devices used in treatment, transmission, or distribution systems such as valves, chlorinators, and separation membranes; and
 6. Surface coatings and paints.
- C. Evidence that a product conforms to the requirements of this Section shall be the appearance on the product or product package of a seal of a certifying entity that is accredited by the American National Standards Institute to provide the certification.
- D. *Chemicals and additives certified as conforming to the national sanitation foundation standards comply with the standards required by this section. ... In those instances where chemicals, additives and drinking water system components that come into contact with drinking water are essential to the design, construction or operation of the drinking water system and have not been certified by the national sanitation foundation or have national sanitation foundation certification but are not available from more than one source, the standards shall provide for the use of alternatives which include:*
 1. *Chemicals and additives composed entirely of ingredients determined by the environmental protection agency, the food and drug administration or other federal agencies*

as appropriate for addition to potable water or aqueous food.

2. *Chemicals and additives composed entirely of ingredients listed in the national academy of sciences water chemicals codex.*
 3. *Chemicals, additives and drinking water system components consistent with the specifications of the American water works association.*
 4. *Chemicals, additives and drinking water system components that are designed for use in drinking water systems and that are consistent with the specifications of the American society for testing and materials.*
 5. *Drinking water system components that are historically used or in use in drinking water systems consistent with standard practice and that have not been demonstrated during past applications in the United States to contribute to water contamination. A.R.S. §§ 49-353.01(B) and (C) (2006).*
- E. The Department exempts the following materials and products from the requirement to conform to ANSI/NSF Standard 61:
1. A concrete structure, tank, or treatment tank basin that is constructed onsite if the structure, tank, or basin is not normally coated or sealed and the construction materials used in the concrete are consistent with subsection (D). If a coating or sealant is specified by the design engineer, the coating or sealant shall comply with ANSI/NSF Standard 61;
 2. An earthen reservoir or canal located upstream of water treatment;
 3. A water treatment plant that is comprised of components that comply with subsections (B), (C), and (D);
 4. A synthetic tank constructed of material that meets Food and Drug Administration standards for a material that comes into contact with drinking water or aqueous food, or a galvanized steel tank, either of which is:
 - a. Less than 15,000 gallons in capacity, and
 - b. Used in a public water system with 500 or fewer service connections; or
 5. A pipe, treatment plant component, or water distribution system component made of lead-free stainless steel.

Historical Note

Former Section R9-8-213 repealed, new Section R9-8-213 adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-213 renumbered without change as Section R18-4-213 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted

effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-213 repealed; new Section renumbered from R18-4-119 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-214. Hauled Water

- A.** All hauled water for delivery to a public water system shall be obtained from a source that is approved pursuant to 18 A.A.C. 5, Article 5, or a regulated public water system.
- B.** Materials or products that come into contact with the water shall comply with R18-4-213(B).
- C.** Roof hatches shall be fitted with a watertight cover.
- D.** A bottom drain valve or other provisions to allow complete drainage and cleaning of a water transport container shall be provided.
- E.** Hoses that are used to deliver drinking water shall be equipped with a cap and shall remain capped when not in use.
- F.** A water hauler shall, at all times, maintain a residual free chlorine level of 0.2 mg/l to 1.0 mg/l in the water that is hauled in a water transport container. A chlorine disinfectant shall be added at the time water is loaded into the container. The residual free chlorine level shall be measured each time water is off-loaded from the container. The water hauler shall maintain a log of all on-loading, chlorine disinfectant additions and residual-free chlorine measurements. Such records shall be maintained for at least three years and made available to the Department for review upon request.
- G.** A water transport container shall be for hauling drinking water only. The container shall be plainly and conspicuously labeled "For Drinking Water Use Only."

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-214 repealed; new Section renumbered from R18-4-125 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-214.01. Repealed

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-214.01 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-214.02. Repealed

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3046, effective January 1, 2004 (Supp. 02-3). R18-4-214.02 including Table 1 and Table 2 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-215. Backflow Prevention

- A.** A public water system shall protect its system from contamination caused by backflow through unprotected cross-connections by requiring the installation and periodic testing of backflow-prevention assemblies. Required backflow-prevention assemblies shall be installed as close as practicable to the service connection.
- B.** A public water system shall ensure that a backflow-prevention assembly is installed whenever any of the following occur:
 1. A substance harmful to human health is handled in a manner that could permit its entry into the public water

system. These substances include chemicals, chemical or biological process waters, water from public water supplies that has deteriorated in sanitary quality, and water that has entered a fire sprinkler system. A Class 1 or Class 2 fire sprinkler system is exempt from the requirements of this Section;

2. A source of water supply exists on the user's premises that is not accepted as an additional source by the public water system or is not approved by the Department;
 3. An unprotected cross-connection exists or a cross-connection problem has previously occurred within a user's premises; or
 4. There is a significant possibility that a cross-connection problem will occur and entry to the premises is restricted to the extent that cross-connection inspections cannot be made with sufficient frequency or on sufficiently short notice to ensure that unprotected cross-connections do not exist.
- C.** Unless a cross-connection problem is specifically identified, or as otherwise provided in this Section, the requirements of this Section shall not apply to single-family residences used solely for residential purposes.
 - D.** A backflow-prevention assembly required by this Section shall comply with the following:
 1. If equipped with test cocks, it shall have been issued a certificate of approval by:
 - a. The University of Southern California Foundation for Cross-Connection Control and Hydraulic Research (USC-FCCCHR), or
 - b. A third-party certifying entity that is unrelated to the product's manufacturer or vendor, and is approved by the Department.
 2. If not equipped with test cocks, it shall be approved by a third-party certifying entity that is unrelated to the product's manufacturer or vendor and is approved by the Department.
 - E.** The minimum level of backflow protection that is provided to protect a public water system shall be the level recommended in Section 7.2 of the Manual of Cross-Connection Control, Ninth Edition, USC-FCCCHR, KAP-200 University Park MC-2531, Los Angeles, CA, 90089-2531, December 1993, (and no future editions or amendments), incorporated by reference and on file with the Department. The types of backflow prevention that may be required, listed in decreasing order according to the level of protection they provide, include: an air-gap separation (AG), a reduced pressure principle backflow prevention (RP) assembly, a pressure vacuum breaker (PVB) assembly, and a double check valve (DC) assembly. Nothing contained in this Section shall prevent a public water system from requiring the use of a higher level of protection than the level required by this subsection.
 1. A public water system may make installation of a required backflow-prevention assembly a condition of service. A user's failure to comply with this requirement shall be sufficient cause for the public water system to terminate water service.
 2. Specific installation requirements for backflow prevention include the following:
 - a. Any backflow prevention required by this Section shall be installed in accordance with the manufacturer's specifications.
 - b. For an AG installation, all piping between the user's connection and the receiving tank shall be entirely visible unless otherwise approved in writing by the public water system.

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- c. An RP assembly shall not be installed in a meter box, pit, or vault unless adequate drainage is provided.
 - d. A PVB assembly may be installed for use on a landscape water irrigation system if the irrigation system conforms to all of the criteria listed below. An RP assembly is required whenever any of the criteria are not met.
 - i. The water use beyond the assembly is for irrigation purposes only;
 - ii. The PVB is installed in accordance with the manufacturer's specifications;
 - iii. The irrigation system is designed and constructed to be incapable of inducing backpressure; and
 - iv. The injection of chemical pesticides and fertilizers, chemigation, is not used or provided in the irrigation system.
- F.** Each backflow-prevention assembly required by this Section shall be tested at least annually, or more frequently if directed by the public water system or the Department. Each assembly shall also be tested after installation, relocation, or repair. An assembly shall not be placed in service unless it has been tested and is functioning as designed. The following provisions shall apply to the testing of backflow-prevention assemblies:
1. Testing shall be in accordance with procedures described in Section 9 of the Manual of Cross-Connection Control. The public water system shall notify the water user when testing of backflow-prevention assemblies is needed. The notice shall specify the date by which the testing must be completed and the results forwarded to the public water system.
 2. Testing shall be performed by a person who is currently certified as a "general" tester by the California-Nevada Section of the American Water Works Association (CA-NV Section, AWWA), the Arizona State Environmental Technical Training (ASETT) Center, or other certifying authority approved by the Department.
 3. When a backflow-prevention assembly is tested and found to be defective, it shall be repaired or replaced in accordance with the provisions of this Section.
- G.** A public water system shall maintain records of backflow-prevention assembly installations and tests performed on backflow-prevention assemblies in its service area. Records shall be retained by the public water system for at least three years and shall be made available for review by the Department upon request. These records shall include an inventory of backflow-prevention assemblies required by this Section and, for each assembly, all of the following information:
1. Assembly identification number and description,
 2. Location,
 3. Date of tests,
 4. Description of repairs and recommendations for repairs made by the tester, and
 5. The tester's name and certificate number.
- H.** A public water system shall submit a written cross-connection incident report to the Department and the local health authority within five business days after a cross-connection problem occurs that results in contamination of the public water system. The report shall address all of the following:
1. Date and time of discovery of the unprotected cross-connection,
 2. Nature of the cross-connection problem,
 3. Affected area,
 4. Cause of the cross-connection problem,
 5. Public health impact,
 6. Date and text of any public health advisory issued,
 7. Each corrective action taken, and
 8. Date of completion of each corrective action.
- I.** An individual with direct responsibility for implementing a backflow prevention program for a water system serving more than 50,000 persons, or an individual with direct responsibility for implementing a backflow prevention program for a for a water system serving 50,000 or fewer persons if the Department has determined that such a need exists, shall be licensed as a "cross-connection control program specialist" by the CA-NV Section, AWWA, the ASETT Center, or another certifying authority approved by the Department.

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-215 repealed; new Section renumbered from R18-4-115 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-216. Vending Machines

An owner of a water vending machine shall be responsible for the proper operation of each water vending machine. The owner shall do all of the following:

1. Clean and maintain each water vending machine according to the manufacturer's recommendations;
2. Retain maintenance and cleaning records for one year;
3. Have analyses performed at least once every six months for total coliform bacteria. Results of such analyses shall be retained for one year. If a sample is positive for total coliform, the water vending machine shall be removed from service, and all components shall be cleaned, replaced, or serviced. The water vending machine shall not be placed back into service until another total coliform bacteria analysis is performed and the result is negative; and
4. Maintain in operable condition all ultraviolet, ozone, or other disinfection components and automatic disabling capabilities built into the vending machine for use in the event of a disinfection system malfunction.

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-216 repealed; new Section renumbered from R18-4-123 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-217. Use of Blending to Achieve Compliance with Maximum Contaminant Levels

- A.** A public water system may use blending to achieve compliance with a MCL if all of the following requirements are met:
1. The public water system has obtained the Department's written approval for a blending plan that includes the following elements:
 - a. Detailed drawings and schematics that show flow, concentrations, and controls;
 - b. Proposed automatic or electronic devices that will be incorporated to ensure that the blend remains in the desired range or shuts off the offending source or triggers an alarm when the blend falls out of the desired range;

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- c. Individual test results from all sources proposed to be blended;
 - d. Projected contaminant levels that will result from blending that show both best-case and worst-case scenarios;
 - e. Identified techniques, and any other information requested by the Department, that show how the blending plan will produce water that will comply with MCLs; and
2. The public water system has obtained the Department's written approval for a monitoring program designed to verify continued compliance with MCLs at all subsequent downstream service connections. This program shall include monitoring on at least a quarterly basis of both of the following:
- a. All sources contributing to the blend; and
 - b. Blended water to ensure that the provisions of this Section are met.
- B.** A public water system shall submit an amended blending plan to the Department to confirm that the new blend achieves compliance with MCLs whenever sources are added to or removed from service or the relative flow rates from blended sources are changed in a way that changes the blend.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 7 A.A.R. 5067, effective October 16, 2001 (Supp. 01-4). Section R18-4-217 repealed; new Section renumbered from R18-4-221 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-218. Criteria and Procedures for Public Water Systems Using Point-of-Entry or Point-of-Use Treatment Devices

- A.** A water supplier may use a point-of-entry (POE) or point-of-use (POU) treatment technology to achieve compliance with a MCL or treatment technique if the water supplier meets the requirements of this Section.
- B.** A public water system may use a POE or POU treatment device to achieve compliance with a MCL, if the treatment device:
- 1. Is not used to achieve compliance with an MCL or treatment technique for a microbial contaminant or an indicator for a microbial contaminant, in accordance with 42 U.S.C. 300g-1(b)(4)(E)(ii) (2007);
 - 2. Is listed in 40 CFR 141 as an acceptable compliance technology for the applicable contaminant;
 - 3. Is certified against the applicable NSF/ANSI Standards;
 - 4. Is owned, controlled and maintained by a public water system or by a person under contract with the public water system to ensure proper operation, maintenance, and compliance with MCLs or treatment techniques; and
 - 5. Is equipped with mechanical warnings to ensure that customers are automatically notified of recommended system maintenance and or operational problems. This performance indication device shall provide notice to the end user at a defined moment in time without shutting off the POE or POU device.
- C.** Prior to installing a POE or POU treatment device, a public water system shall obtain the Department's written approval of a POE or POU operation and maintenance (O & M) plan. A public water system shall submit an O & M plan to the Department that ensures proper long-term operation, maintenance, and monitoring of the POE or POU treatment devices. An O & M plan shall ensure that:

- 1. The POE or POU treatment device provides health protection equivalent to the health protection provided by centralized water treatment. "Equivalent" means that water treated by the POE or POU treatment device meets all national primary drinking water regulations.
- 2. A residential building, or a nonresidential building that uses water for human consumption, that is connected to the public water system has a POE or POU treatment device that is installed, operated, maintained, and monitored in a manner that assures continuous compliance with the MCLs, treatment techniques, and other requirements of this Chapter.
- 3. Multi-unit residential and nonresidential buildings utilizing POU treatment devices to achieve compliance with this Chapter have a sufficient number of POU devices installed to provide adequate potable water for all residents, employees, and customers.
- 4. The rights and responsibilities of persons served by the public water system are conveyed with the title upon the sale of property containing a POU treatment device, including but not limited to the following:
 - a. The public water system owns and is responsible for maintaining a POU treatment device that is installed to meet the requirements of this Section; and
 - b. Persons served by public water systems must grant public water system employees reasonable access to POU treatment devices, so that the devices can be properly maintained. Public water systems may discontinue water service to a customer who refuses to allow public water system employees to enter the customer's home or business to inspect and maintain POU treatment devices.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-218 repealed; new Section renumbered from R18-4-222 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-219. Exclusions

- A.** A water supplier may request an exclusion from any requirement contained in this Chapter if such requirement is not also a requirement contained in a federal drinking water law. The Department shall consider the application of a water supplier for an exclusion from compliance with portions of this Chapter if the water supplier satisfactorily demonstrates that:
- 1. The request is not for a requirement that could be the subject of a variance or exemption under R18-4-103;
 - 2. The request is not for requirements relating to turbidity, nitrate, or microbiological contaminants; and
 - 3. The exclusion will not result in unreasonable risk to public health.
- B.** An application for an exclusion shall contain the following information:
- 1. The nature and duration of the exclusion requested,
 - 2. Analytical results of water quality sampling of the water system including tests conducted as required by this Chapter,
 - 3. An explanation and submittal of evidence that the exclusion will not result in an unreasonable risk to public health, and
 - 4. Other information that the applicant believes to be pertinent or that the Department requires.

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C. The Department shall take the following action on the application:

1. If the Department grants the request for an exclusion, it shall notify the applicant of that decision in writing within 90 days of receipt of the application. Such notice shall identify the facility covered, the conditions and requirements of the exclusion, including control measures, and that the exclusion may be terminated upon a finding that the water system has failed to comply with any conditions or requirements of the exclusion.
2. If the Department determines that an exclusion is not justified, it shall notify the applicant of the intention of denial within 90 days of receipt of the application, indicating the reasons for the proposed denial, and shall offer the applicant an opportunity to submit additional information to the Department within 30 days of the notice of intention to deny application. The Department shall make a final determination and notify the applicant within 30 days after receiving such additional information. If no additional information is submitted, the application shall be denied.

D. In addition to reviewing a request submitted by a water supplier, the Department may, on its own initiative, grant exclusions to water systems, either individually or on a group basis, if the exclusions meet criteria prescribed in subsection (A).

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-219 repealed; new Section renumbered from R18-4-112 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-220. Repealed

Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-220 renumbered without change as Section R18-4-220 (Supp. 87-3). Section repealed effective June 30, 1989 (Supp. 89-2). New Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-220 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-221. Renumbered

Historical Note

Former Section R9-8-221 repealed, new Section R9-8-221 adopted effective May 26, 1978 (Supp. 78-3). Correction, subsection (D), paragraph (2), subparagraph (b), drinking water standard for silvex, should read 0.01 mg/l as amended effective May 26, 1978 (Supp. 82-3). Amended subsection (D) effective November 2, 1982 (Supp. 82-6). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-221 renumbered without change as Section R18-4-221 (Supp. 87-3). Amended and new subsections (F) and (G) added effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995

(Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-221 renumbered to R18-4-217 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-222. Renumbered

Historical Note

Former Section R9-8-222 repealed, new Section R9-8-222 adopted effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-222 renumbered without change as Section R18-4-222 (Supp. 87-3). Amended and new subsections (C) and (D) added effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-222 renumbered to R18-4-218 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-223. Use of Bottled Water

- A. A public water system may use bottled water on a temporary basis to avoid an unreasonable risk to health. A public water system shall not use bottled water to achieve compliance with a MCL.
- B. If a public water system uses bottled water to avoid an unreasonable risk to health, the public water system is responsible for the provision of sufficient quantities of bottled water to every person served by the public water system via door-to-door bottled water delivery.
- C. A public water system that uses bottled water as a condition for receiving a variance or an exemption shall comply with the following:
 1. The public water system shall develop and put in place a monitoring program approved by the Department that provides reasonable assurances that the bottled water meets applicable MCLs. The public water system shall monitor a representative sample of the bottled water to determine compliance with applicable MCLs during the first three-month period that it supplies the bottled water to the public and annually thereafter. Results of the bottled water monitoring program shall be provided to the Department annually; or
 2. The public water system shall receive a certification from the bottled water company that the bottled water supplied has been taken from an “approved source” as defined in 21 CFR 129.3(a); the bottled water company has conducted monitoring in accordance with 21 CFR 129.80(g)(1) through (3); and the bottled water does not exceed any MCLs or quality limits as set out in 21 CFR 165.110, 21 CFR 110, and 21 CFR 129. The public water system shall provide the certification to the Department in the first quarter after it supplies bottled water and annually thereafter. The Department may waive the certification requirements prescribed in this subsection if an approved monitoring program is already in place in another state; and
 3. The public water system is fully responsible for the provision of sufficient quantities of bottled water to every person served by the public water system via door-to-door bottled water delivery.

Historical Note

Former Section R9-8-223 repealed, new Section R9-8-223 adopted effective May 26, 1978 (Supp. 78-3).

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Amended effective August 7, 1979 (Supp. 79-4). Amended subsection (D), paragraph (4) effective November 2, 1982 (Supp. 82-6). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-223 renumbered without change as Section R18-4-223 (Supp. 87-3). Amended and a new subsection (F) added effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1).

R18-4-224. Renumbered**Historical Note**

Former Section R9-224 repealed, new Section R9-8-224 adopted effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-224 renumbered without change as Section R18-4-224 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Former Section R18-4-224 repealed effective August 8, 1991 (Supp. 91-3). New Section adopted effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 7 A.A.R. 5067, effective October 16, 2001 (Supp. 01-4). Section R18-4-224 renumbered to R18-4-301 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-225. Renumbered**Historical Note**

Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-225 renumbered without change as Section R18-4-225 (Supp. 87-3). Former Section R18-4-224 repealed effective August 8, 1991 (Supp. 91-3). New Section adopted effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 7 A.A.R. 5067, effective October 16, 2001 (Supp. 01-4). Section R18-4-225 renumbered to R18-4-304 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-226. Renumbered**Historical Note**

Adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended subsection (B) effective January 6, 1984 (Supp. 84-1). Former Section R9-8-226 renumbered without change as Section R18-4-226 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Former Section R18-4-224 repealed effective August 8, 1991 (Supp. 91-3). New Section adopted effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 7 A.A.R. 5067, effective October 16, 2001 (Supp. 01-4). Section R18-4-226 renumbered to R18-4-305 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-227. Repealed**Historical Note**

Adopted effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-3-227 renumbered without change as Section R18-4-227 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Former Section R18-4-224 repealed effective August 8, 1991 (Supp. 91-3).

R18-4-228. Repealed**Historical Note**

Adopted effective June 30, 1989 (Supp. 89-2). Former

Section R18-4-224 repealed effective August 8, 1991 (Supp. 91-3).

R18-4-229. Repealed**Historical Note**

Adopted effective June 30, 1989 (Supp. 89-2). Former Section R18-4-224 repealed effective August 8, 1991 (Supp. 91-3).

R18-4-230. Repealed**Historical Note**

Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-230 renumbered without change as Section R18-4-230 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-231. Repealed**Historical Note**

Former Section R9-8-231 repealed, new Section R9-8-231 adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-231 renumbered without change as Section R18-4-231 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-232. Repealed**Historical Note**

Former Section R9-8-232 repealed, new Section R9-8-232 adopted effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-232 renumbered without change as Section R18-4-232 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-233. Repealed**Historical Note**

Former Section R9-8-233 repealed, new Section R9-8-232 adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-233 renumbered without change as Section R18-4-233 (Supp. 87-3). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-234. Repealed**Historical Note**

Former Section R9-8-234 repealed, new Section R9-8-234 adopted effective May 26, 1978 (Supp. 78-3). Amended effective Feb. 20, 1980 (Supp. 80-1). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-234 renumbered without change as Section R18-4-234 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-235. Repealed**Historical Note**

Adopted effective January 6, 1984 (Supp. 84-1). Former Section R9-8-235 renumbered without change as Section R18-4-235 (Supp. 87-3). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed

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effective April 28, 1995 (Supp. 95-2).

R18-4-236. Repealed**Historical Note**

Adopted effective January 6, 1984 (Supp. 84-1). Former Section R9-8-236 renumbered without change as Section R18-4-236 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-237. Repealed**Historical Note**

Adopted effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-238. Repealed**Historical Note**

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-239. Repealed**Historical Note**

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-240. Repealed**Historical Note**

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-241. Repealed**Historical Note**

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-242. Repealed**Historical Note**

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-243. Repealed**Historical Note**

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-244. Repealed**Historical Note**

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-245. Repealed**Historical Note**

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-246. Repealed**Historical Note**

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-247. Repealed**Historical Note**

Adopted effective August 8, 1991 (Supp. 91-3). Repealed

effective April 28, 1995 (Supp. 95-2).

R18-4-248. Repealed**Historical Note**

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-249. Repealed**Historical Note**

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-250. Repealed**Historical Note**

Former Section R9-8-250 repealed, new Section R9-8-250 adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-250 renumbered without change as Section R18-4-250 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-251. Repealed**Historical Note**

Former Section R9-8-250 repealed, new Section R9-8-251 adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended by adding subsection (B) effective November 2, 1982 (Supp. 82-6). Former Section R9-8-251 renumbered without change as Section R18-4-251 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-252. Repealed**Historical Note**

Former Section R9-8-252 repealed, new Section R9-8-252 adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended subsection (A) effective January 6, 1984 (Supp. 84-1). Former Section R9-8-252 renumbered without change as Section R18-4-252 (Supp. 87-3). Amended by adding a new subsection (C) effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

R18-4-253. Repealed**Historical Note**

Former Section R9-8-253 repealed, new Section R9-8-253 adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended subsection (A) and deleted subsection (B) effective January 6, 1984 (Supp. 84-1). Former Section R9-8-253 renumbered without change as Section R18-4-253 (Supp. 87-3). Repealed effective August 8, 1991 (Supp. 91-3).

R18-4-254. Reserved**R18-4-255. Reserved****R18-4-256. Reserved****R18-4-257. Reserved****R18-4-258. Reserved****R18-4-259. Reserved****R18-4-260. Repealed**

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Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-260 renumbered without change as Section R18-4-260 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-261. Repealed**Historical Note**

Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-261 renumbered without change as Section R18-4-261 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-262. Repealed**Historical Note**

Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-262 renumbered without change as Section R18-4-262 (Supp. 87-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-263. Repealed**Historical Note**

Adopted effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-263 renumbered without change as Section R18-4-263 (Supp. 87-3). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-264. Repealed**Historical Note**

Adopted effective May 26, 1978 (Supp. 78-3). Amended subsection (B) effective January 6, 1984 (Supp. 84-1). Former Section R9-8-264 renumbered without change as Section R18-4-264 (Supp. 87-3). Repealed effective June 30, 1989 (Supp. 89-2). New Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-265. Repealed**Historical Note**

Adopted effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-265 renumbered without change as Section R18-4-265 (Supp. 87-3). Amended subsections (B) and (C) effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-266. Repealed**Historical Note**

Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-266 renumbered without change as Section R18-4-266 (Supp. 87-3). Amended subsection (A) effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-267. Repealed**Historical Note**

Adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-267 renumbered without change as Section R18-4-267

(Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-268. Repealed**Historical Note**

Adopted effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-268 renumbered without change as Section R18-4-268 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-269. Repealed**Historical Note**

Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-269 renumbered without change as Section R18-4-269 (Supp. 87-3). Amended subsection (A) effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-270. Repealed**Historical Note**

Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-270 renumbered without change as Section R18-4-270 (Supp. 87-3). Repealed effective June 30, 1989 (Supp. 89-2). New Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-271. Repealed**Historical Note**

Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-271 renumbered without change as Section R18-4-271 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-272. Repealed**Historical Note**

Adopted effective May 26, 1978 (Supp. 78-3). Amended subsections (A) and (D) effective January 6, 1984 (Supp. 84-1). Former Section R9-8-272 renumbered without change as Section R18-4-272 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-273. Repealed**Historical Note**

Adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-273 renumbered without change as Section R18-4-273 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-274. Reserved**R18-4-275. Reserved****R18-4-276. Reserved**

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R18-4-277. Reserved**R18-4-278. Reserved****R18-4-279. Reserved****R18-4-280. Repealed****Historical Note**

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-281. Repealed**Historical Note**

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-282. Repealed**Historical Note**

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-283. Reserved**R18-4-284. Reserved****R18-4-285. Reserved****R18-4-286. Reserved****R18-4-287. Reserved****R18-4-288. Reserved****R18-4-289. Reserved****R18-4-290. Repealed****Historical Note**

Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-290 renumbered without change as Section R18-4-290 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

Appendix 1. Repealed

Amended effective January 6, 1984 (Supp. 84-1). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

Appendix 2. Repealed

Amended effective January 6, 1984 (Supp. 84-1). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

Appendix 3. Repealed**Historical Note**

Amended effective January 6, 1984 (Supp. 84-1). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

Appendix 4. Repealed**Historical Note**

Former Appendix 4 repealed, new Appendix 4 adopted effective January 6, 1984 (Supp. 84-1). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

Appendix 5. Repealed**Historical Note**

Former Appendix 5 renumbered as Appendix 6, new Appendix 5 adopted effective November 2, 1982 (Supp. 82-6). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

82-6). Amended effective June 30, 1989 (Supp. 89-2).

Repealed effective August 8, 1991 (Supp. 91-3).

Appendix 6. Repealed**Historical Note**

Former Appendix 5 renumbered as Appendix 6 effective November 2, 1982 (Supp. 82-6). Former Appendix 6 repealed, new Appendix 6 adopted effective January 6, 1984 (Supp. 84-1). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

Appendix 7. Repealed**Historical Note**

Adopted effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

ARTICLE 3. MONITORING ASSISTANCE PROGRAM**R18-4-301. Applicability**

- A.** A public water system that serves 10,000 or fewer persons shall participate in the monitoring assistance program. Within 60 days after receiving notice of participation in the monitoring assistance program from the Department, a public water system that determines that it serves more than 10,000 persons shall substantiate its determination by submitting to the Department the portion of the most recent census provided by the Arizona Department of Economic Security, Research Administration, Population Statistics Unit that supports the public water system's determination.
- B.** A public water system that is not obligated to participate in the monitoring assistance program may elect to participate in the monitoring assistance program if the owner of the public water system:
1. Notifies the Department in writing of the public water system's intention to participate in the monitoring assistance program,
 2. Agrees to participate in the monitoring assistance program for a minimum of three years, and
 3. Pays the fees required by R18-4-304. Subject to payment of the required fees, the public water system's participation shall begin at the start of the next full calendar year of a compliance period.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-301 repealed; new Section renumbered from R18-4-224 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-301.01. Renumbered**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 1686, effective April 19, 1999 (Supp. 99-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-301.01 renumbered to R18-4-212 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

Table 1. Renumbered**Historical Note**

New Table made by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Table 1 following R18-4-301.01 renumbered to R18-4-212, Table 1 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-301.02. Repealed**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-301.02 and Tables 1 and 2 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-302. Contractor Responsibilities

- A.** Under the monitoring assistance program, a contractor is authorized to collect, transport, analyze, and report water samples on behalf of a participating public water system. The contractor or a party designated by the contractor shall conduct baseline monitoring for all chemicals for which the system is required to monitor under this Chapter, except for copper, lead, disinfection byproducts, and microbiological contaminants, which remain the responsibility of the public water system. Baseline monitoring includes routine monitoring for contaminants included in the monitoring assistance program. Baseline monitoring does not include increased monitoring required by this Chapter when the results of baseline monitoring indicate the presence of a contaminant at a level that requires increased monitoring by a participating public water system.
- B.** A contractor shall deliver copies of monitoring analysis results to the public water system and to the Department.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-302 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-303. Public Water System Responsibilities

- A.** Although a contractor performs baseline monitoring when a public water system participates in the monitoring assistance program, the public water system remains legally responsible for compliance with all other requirements of this Chapter.
- B.** The legal owner of a public water system participating in the monitoring assistance program shall notify the Department by July 1 of each year of:
1. The legal owner's name, current mailing address, and phone number;
 2. The population currently served by the public water system;
 3. The public water system identification number; and
 4. The number of meters and service connections currently in the public water system.
- C.** A public water system that participates in the monitoring assistance program shall not deny a contractor access to or restrict a contractor's access to the public water system or prevent a contractor from collecting a sample covered under the monitoring assistance program.
- D.** Direct reporting. A public water system may contract with a laboratory or another agent to report monitoring results to the Department, but the public water system remains legally responsible for compliance with reporting requirements.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-303 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-304. Fees for the Monitoring Assistance Program

- A.** The Department shall assess, and a public water system participating in the monitoring assistance program shall pay, the following annual fees, subject to adjustments referenced in subsection (B):
1. An annual fee of \$250, and
 2. A unit fee of \$2.57 per meter or service connection.
- B.** If the monitoring assistance fund has a surplus after execution of the previous year's contract, any surplus in excess of \$200,000 in any year shall be used to reduce future fees for public water systems that paid annual fees in the previous compliance period, in a manner consistent with the program invoicing system. In the first compliance period that a public water system participates in the monitoring assistance program, the public water system shall pay the full amount of annual fees due under this Section, and is not entitled to a fee reduction resulting from a surplus in the monitoring assistance fund from a prior compliance period.
- C.** If a public water system serving 10,000 or fewer persons at the beginning of a compliance period increases service during the compliance period so that the public water system serves more than 10,000 persons annually, the public water system may elect to cease participation in the monitoring assistance program under the following conditions:
1. If the monitoring assistance program has already conducted monitoring for the public water system during the compliance period, the public water system shall remain in the monitoring assistance program, and pay annual fees, for the remainder of the compliance period.
 2. If the monitoring assistance program has not conducted monitoring for the public water system during the compliance period, the public water system may cease participating in the monitoring assistance program, and if so, the Department shall refund any monitoring fees paid by the public water system during the compliance period.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-304 repealed; new Section renumbered from R18-4-225 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-305. Collection and Payment of Fees

- A.** The Department shall annually mail an invoice for fees to the legal owner of a public water system participating in the monitoring assistance program. The owner of the public water system shall pay the invoiced amount to the Department, at the address listed on the invoice, by the due date indicated on the invoice.
- B.** The Department shall make refunds or billing corrections if a public water system demonstrates an error in the amount billed. The owner of a public water system shall send a written request for a refund or correction to the Department, at the address on the invoice, within 90 days of the invoice date.
- C.** The Department may verify the number of meters and service connections of a participating public water system.
- D.** The Department shall not waive fees prescribed by R18-4-304.
- E.** The owner of a public water system that fails to pay fees assessed by the Department in a timely manner shall be subject to the penalties listed in A.R.S. § 49-354. Failure to notify the Department of the owner's current mailing address does not relieve the owner of a public water system from liability for penalties.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-305 renumbered to R18-4-306 by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1).

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New Section R18-4-305 renumbered from R18-4-226 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-306. Repealed**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Former Section R18-4-306 repealed; new Section R18-4-306 renumbered from R18-4-305 and amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-307. Repealed**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-308. Repealed**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-309. Repealed**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-310. Repealed**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-311. Repealed**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-312. Repealed**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-313. Repealed**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-314. Repealed**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-315. Repealed**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-316. Repealed**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-317. Repealed**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

Table 1. Repealed**Historical Note**

Table 1 adopted by final rulemaking at 5 A.A.R. 1686, effective April 19, 1999 (Supp. 99-2). Table repealed by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1).

Appendix A. Repealed**Historical Note**

New Appendix made by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Appendix A repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

Appendix B. Repealed**Historical Note**

New Appendix made by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Appendix B repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

ARTICLE 4. REPEALED**R18-4-401. Repealed****Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective December 8, 1998 (Supp. 98-4). Former Section R18-4-401 repealed; new Section R18-4-401 renumbered from R18-4-402 and amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-402. Repealed**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended

effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4). Former Section R18-4-402 renumbered to R18-4-401; new Section R18-4-402 renumbered from R18-4-403 and amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-403. Repealed**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Section repealed; new Section adopted effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 7 A.A.R. 5067, effective October 16, 2001 (Supp. 01-4). Section R18-4-403 renumbered to R18-4-402 by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). New Section made by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-404. Repealed**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective December 8, 1998 (Supp. 98-4). Section repealed by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1).

R18-4-405. Repealed**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective December 8, 1998 (Supp. 98-4). Section repealed by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1).

ARTICLE 5. RECODIFIED

Article 5 recodified to 18 A.A.C. 5, Article 5 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-501. Recodified**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Section recodified to R18-5-501 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-502. Recodified**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). A.R.S. citation in subsection (D)(4) corrected (Supp. 04-1). Section recodified to R18-5-502 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-503. Recodified**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section recodified to R18-5-503 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-504. Recodified**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section recodified to R18-5-504 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-505. Recodified**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Subsection citation in subsection (B) corrected (Supp. 04-1). Section recodified to R18-5-505 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-506. Recodified**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section recodified to R18-5-506 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-507. Recodified**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section recodified to R18-5-507 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-508. Recodified**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section recodified to R18-5-508 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-509. Recodified**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section recodified to R18-5-509 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

Appendix A. Repealed**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Correction of word “sued” to “used” in subsection (71) (Supp. 96-1). Appendix A amended effective June 3, 1998 (Supp. 98-3). Appendix A repealed by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1).

Appendix B. Repealed**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Appendix B repealed; new Appendix B renumbered from Appendix C without change effective June 3, 1998 (Supp. 98-3). Appendix B repealed by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1).

Appendix C. Renumbered**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Appendix C renumbered to Appendix B without change effective June 3, 1998 (Supp. 98-3).

ARTICLE 6. CAPACITY DEVELOPMENT REQUIREMENTS FOR A NEW PUBLIC DRINKING WATER SYSTEM**R18-4-601. Applicability**

This Article applies to new CWSs and new NTNCWSs that begin operation on or after October 1, 1999. This Article does not apply to an existing public water system.

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Historical Note

New Section adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

R18-4-602. Elementary Business Plan

- A. To become a new public water system, an owner shall file an elementary business plan for review and approval by the Department, on a form provided by the Department. The elementary business plan shall meet the requirements of and contain all information required in R18-4-603, R18-4-604, and R18-4-605.
- B. An owner shall not commence operation of a public water system without Department approval under R18-4-606.
- C. If the owner of a new public water system fails to submit a complete application, the Department shall suspend the review process and send a notice of incomplete elementary business plan to the owner. The owner shall submit the missing information to the Department within 60 days of the date of the notice of incomplete elementary business plan. If missing information is not received at the Department within the 60 day time period, the Department shall deny the elementary business plan and return the elementary business plan to the owner.

Historical Note

New Section adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

R18-4-603. Technical Capacity Requirements

An owner of a new public water system shall submit the following to the Department for a determination of technical capacity:

1. Documentation of a drinking water source adequacy minimum of 50 gallons of water per person per day for a period of 100 years, a 100 year water availability designation from the Arizona Department of Water Resources (ADWR), or a Certificate of Assured Water Supply from ADWR;
2. Documentation that the drinking water served to the public will meet the safe drinking water standards of this Chapter;
3. Documentation that infrastructure, treatment, and storage design meets the requirements of this Chapter, Articles 2, 3, and 5;
4. Documentation that the public water system is operated by a certified operator of the sufficient grade and type; and
5. Documentation that contains at least the following:
 - a. Day 1 to final build-out technical and engineering needs projections;
 - b. Proposed water system design specification and proposed uses including commercial and domestic use phases;
 - c. Information describing the life of the plant;
 - d. A demonstration that all site-specific components meet nationally recognized standards, such as those established by the American Water Works Association, National Sanitation Foundation, or Underwriter's Laboratory;
 - e. Manufacturers' specifications on components used in the construction of the water system; and
 - f. Corrective action plan to address site-specific component replacement or repair protocols based on

manufacturer's recommendations or engineer's specification.

Historical Note

New Section adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

R18-4-604. Managerial Capacity Requirements

An owner of a new public water system shall submit the following information as part of the elementary business plan to the Department for a determination of managerial capacity:

1. A statement of how the public water system is owned, such as by major stockholders, board of directors, sole proprietor cooperative, governmental agency or district, corporation, limited partnership, or limited liability corporation;
2. Name, address, and phone number of owner;
3. Organizational chart of the new public water system;
4. Staff job descriptions and responsibilities;
5. Water system capital improvement plan up to the proposed full system build-out or for a five-year projection, whichever is greater;
6. Certified operator grade and type that will be required by the new public water system, based upon water system design specifications;
7. A statement of the intent to create a CWS or NTNCWS and any intent to transfer ownership of the public water system as part of the construction plan or project phase build-out;
8. Method to ensure provision of information listed in Appendix B, item 4 to subsequent owners; and
9. A disclosure statement signed by the owner setting forth the owner's responsibility to comply with the requirements of this Article and to disclose all information relevant to the operation of the public water system upon transfer of ownership as outlined in Appendix B.

Historical Note

New Section adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

R18-4-605. Financial Capacity Requirements

An owner of a new public water system shall submit information for a five-year financial capacity plan, or a financial capacity plan to the end of the build-out phase, whichever is longer, that demonstrates financial capacity and documents or contains all of the information listed in Appendices C and D.

Historical Note

New Section adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

R18-4-606. Review, Approval, Denial Process

- A. The Department shall review and evaluate technical capacity, based upon the requirements in R18-4-603 and Appendix A.
- B. The Department shall review and evaluate managerial capacity, based upon the requirements in R18-4-604 and Appendix A.
- C. The Department shall accept a financial determination made by the Arizona Corporation Commission (ACC) as meeting

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the financial capacity requirements contained in this Article for a new CWS or new NTNCWS under the jurisdiction of the ACC. The applicant shall submit documentation to the Department that verifies ACC approval of the public water system's financial capacity.

- D. The Department shall accept a financial determination as set forth in the certificate of assured water supply from the Arizona Department of Water Resources, Active Management Area Program (ADWR) as meeting the financial capacity requirements contained in this Article for a new CWS or new NTNCWS. The owner shall submit documentation to the Department that verifies ADWR approval of its financial capacity.
- E. If a new public water system does not fall under financial review jurisdiction of the ACC or ADWR, the new CWS or new NTNCWS shall submit to the Department for review a completed financial capacity portion of the elementary business plan. The Department shall review and evaluate financial capacity, based upon the requirements in R18-4-605 and Appendices A, C, and D.
- F. The Department shall notify an owner of a new public water system in writing of a deficiency in the elementary business plan or approve or deny the elementary business plan within 90 days of a receipt of a complete elementary business plan. The owner shall have 60 days from the date of a notice of deficiency to submit to the Department the information necessary to correct the deficiency in the elementary business plan. If the owner of the new public water system fails to send the requested information so that it is received by the Department

within 60 days of the date of the notice of deficiency, the Department shall deny the elementary business plan and return it to the owner with a written explanation for the denial and information on the appeal process.

- G. If an owner modifies technical or managerial specifications at any time between the approval to construct and the approval of construction, the owner shall notify the Department of the need to modify the elementary business plan in the technical, managerial, and financial capacity documentation. The Department shall revoke approval of the elementary business plan if the owner fails to notify the Department within 30 days of a modification.

Historical Note

New Section adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

R18-4-607. Appeals

An owner may appeal denial of an elementary business plan under A.R.S. § 41-1092 et seq.

Historical Note

New Section adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

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Appendix A. Elementary Business Plan Checklist

Elementary Business Plan Checklist

Technical Capacity	Yes	No	N/A
1. Source Adequacy - Does the documentation demonstrate 50 gallons of water per person per day for 100 years or does the system have an Arizona Department of Water Resources Certificate of assured water supply?	_____	_____	_____
2. Source Adequacy - Does the source approval information demonstrate that the source meets drinking water quality standards or have applicable drinking water technologies been described?	_____	_____	_____
3. Infrastructure - Do the design criteria meet the requirements of R18-4-502 through R18-4-509?	_____	_____	_____
4. Treatment - Do the design criteria include treatment technologies approved by ADEQ in 18 A.A.C. 4, Articles 2, 3, and 5?	_____	_____	_____
5. Does the system have a certified operator of the appropriate grade and type?	_____	_____	_____
6. Does the documentation include an elementary business plan containing technical and engineering needs projections for a time period covering day 1 to final build-out or for a five-year time period, which ever is greater?	_____	_____	_____
7. Does the documentation include the proposed water system design specifications and proposed uses including commercial and domestic use phases?	_____	_____	_____
8. Does the documentation include an elementary business plan containing the information on the components used in the design and construction of the system along with the components life span based upon manufacturer’s specifications?	_____	_____	_____
9. Does the documentation include an Operations and Maintenance Plan that contains standards that are nationally recognized on all site-specific components, such as American Water Works Association, National Sanitation Foundation, or Underwriter’s Laboratory?	_____	_____	_____
10. Does the documentation include an operation and maintenance plan with the manufacturer’s specifications on all components used in the construction of the water system?	_____	_____	_____
11. Does the documentation include an operations and maintenance plan and emergency operation plan to address site-specific component replacement or repair protocols based on manufacturer’s recommendations or engineer’s specifications?	_____	_____	_____
Managerial Capacity	Yes	No	N/A
12. Does the documentation include ownership type? Select all that apply.	_____	_____	_____
Sole Proprietor	_____	_____	_____
Major Stockholders	_____	_____	_____
Board of Directors	_____	_____	_____
Cooperative	_____	_____	_____
Government Agency or District	_____	_____	_____
Corporation	_____	_____	_____
Limited Liability Corporation	_____	_____	_____
Partnership	_____	_____	_____
Other _____	_____	_____	_____
13. Does the documentation include name, address, and telephone number of owner?	_____	_____	_____
14. Does the documentation include an organizational chart of owners, management, and staff with their position or job titles?	_____	_____	_____
15. Does the documentation include staff job descriptions and responsibilities?	_____	_____	_____
16. Does the documentation include a capital improvement plan up to the proposed full system build-out or for a five-year projection, whichever is greater?	_____	_____	_____
17. Does the documentation identify the grade and type of certified operator that will be needed to operate the system according to site-specific components?	_____	_____	_____
18. Does the documentation identify the intent to create a CWS or NTNCWS?	_____	_____	_____
19. Does the documentation transfer the ownership of the water system as part of the build-out phase of the project?	_____	_____	_____
20. Does the documentation identify the policies or mechanisms to ensure that all system-specific technical, managerial, and financial information of the water system is transferred to a new owner?	_____	_____	_____
21. Does the documentation include the owner’s signed disclosure statement agreeing to comply with the requirements of these Articles and a general disclosure statement agreeing to disclose all information relevant to the operation of the water system to any transferee of ownership? (See Appendix B).	_____	_____	_____

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Financial Capacity	Yes	No	N/A
22. Is the system regulated by the Arizona Corporation Commission (ACC) or ADWR? If Yes go to Question 23. If No go to Question 25.	_____	_____	_____
23. Has the system received an approval from the ACC on its fee structure, or ADWR on its financial capacity?	_____	_____	_____
24. Systems regulated by the Arizona Corporation Commission or Department of Water Resources shall provide information required in 22 and 23 for the financial capacity determination review by ADEQ.	_____	_____	_____
25. For New CWSs and NTNCWS NOT regulated by ACC, is all information listed in Appendices C and D included?	_____	_____	_____

Historical Note

Appendix A adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

Appendix B. Drinking Water Capacity Development Statement of Responsibility

Drinking Water Capacity Development Statement of Responsibility

Applicant Information:		
Name: _____		
Mailing Address _____		
Phone Number: _____	Fax Number: _____	E-mail: _____
Statement Information:		
1) Name of Water System: _____ PWS ID# _____		
2) Ownership Type (Please check all that apply):		
<input type="checkbox"/> Sole Proprietor	<input type="checkbox"/> Major Stockholders	<input type="checkbox"/> Board of Directors
<input type="checkbox"/> Cooperative	<input type="checkbox"/> Government Agency	<input type="checkbox"/> District
<input type="checkbox"/> Public Entity	<input type="checkbox"/> Corporation	<input type="checkbox"/> Limited Liability Corporation
<input type="checkbox"/> Other (please explain) _____		
3) Name of Owner(s): (Check one) See below Attach a separate sheet if more space is needed		
Owner 1: _____		
Owner 2: _____		
Owner 3: _____		
4) Agencies with rules applicable to the Water System: (Please check all that apply)		
<input type="checkbox"/> Arizona Department of Environmental Quality	<input type="checkbox"/> Arizona Corporation Commission	
<input type="checkbox"/> Arizona Department of Water Resources	<input type="checkbox"/> Arizona Department of Real Estate	
<input type="checkbox"/> Arizona Department of Commerce	<input type="checkbox"/> Arizona Department of Agriculture	
<input type="checkbox"/> Arizona Department of Corrections	<input type="checkbox"/> Office of the Fire Marshal	
<input type="checkbox"/> Arizona Land Department	<input type="checkbox"/> Arizona Department of Revenue	
<input type="checkbox"/> Arizona Department of Transportation	<input type="checkbox"/> Maricopa County Environmental Services	
<input type="checkbox"/> Pima County Department of Environmental Quality	<input type="checkbox"/> Environmental Protection Agency Region IX	
<input type="checkbox"/> Other(s) please specify _____		
page 1 of 2		

5) Statement of Intent (Select one):

- It **IS** the intent of the owner or developer of this NEW CWS or NEW NTNCWS to transfer ownership of the water system. As part of the ownership transfer, it is understood that the owner or developer has a responsibility to disclose and transfer ALL information relevant to the construction and operation of the water system to the new owner.
- It is **NOT** the intent of the owner to transfer ownership of the NEW CWS or NTNCWS within one year of the completion of construction of the water system.

6) Date owner expects to begin operation:

Month _____ Day _____ Year _____

7) Drinking Water Sources used: (Select all that apply)

- Ground Water
- Purchased Ground Water
- Surface Water
- Purchased Surface Water

8) Table of Contents of Systems Elementary Business Plan (Please check one):

- The Table of Contents of the Elementary Business Plan is attached.
- The Table of Contents of the Elementary Business Plan is summarized below.

Summary _____

9) Signature of each current owner: Check if additional signature page is attached. _____

I agree to comply with the requirements of 18 A.A.C. 4, Article 6.

Print Name: _____ Signature: _____ Date: _____

Print Name: _____ Signature: _____ Date: _____

Print Name: _____ Signature: _____ Date: _____

Historical Note

Appendix B adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

Appendix C. Financial Capacity for New CWSs and NTNCWSs, Worksheet 1

Financial Capacity for New CWSs and NTNCWSs

Worksheet 1

Owner: _____

Completed by: _____ Date: _____

5-Year Financial Projection	Year 1 Projection	Year 2 Projection	Year 3 Projection	Year 4 Projection	Year 5 Projection
Enter Year:					
1. Beginning Cash on Hand					
a. Unmetered Water Revenue					
b. Metered Water Revenue					
c. Other Water Revenue					
d. Total Water Revenues (1a thru 1c)					
e. Connection Fees					
f. Interest and Dividend Income					
g. Other Income					
h. Total Cash Revenues (1d thru 1g)					
i. Additional Revenue Needed					
j. Loans, Grants or other Cash Injection (please specify)					
2. Total Cash Balance (1h to 1j)					
3. Total Cash Available (1+2)					
4. Operating Expenses					
a. Salaries and wages					
b. Employee Pensions and Benefits					
c. Utilities					
d. Chemicals					
e. Materials and Supplies					
f. Laboratory					
g. Contractual Services					

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h. Insurance					
i. Miscellaneous					
j. Total Operations and Maintenance Expenses (4a thru 4i)					
k. Replacement Expenditures					
l. Total Operations and Maintenance expenditures plus Replacement expenditures (4j+4k)					
m. Loan Principal/Capital Lease Payments					
n. Loan Interest Payments					
o. Capital Purchases (specify):					
5. Total Cash Paid Out (4m thru 4o)					
6. Ending Cash Position (3 - 5)					
7. Number of Customer Accounts					
8. Average Annual User Charge per account (1d/7)					
9. Coverage Ratio (1h-4l)/(4m+4n)					
10. Operating Ratio (1d/4l)					
11. End of Year Operating Cash (6 - 12)					
12. End of Year Reserves					
a. Operating Reserves					
b. Debt Service Reserve					
c. Capital Improvement Reserve					
d. Replacement Reserve					
e. Other					
Total Reserves (12a thru 12e)					

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Appendix C. (Continued) Financial Capacity for New CWSs and NTNCWSs, Definitions for Worksheet 1

**Arizona Financial Capacity For New
CWSs and NTNCWSs
Definitions for Worksheet 1**

5-Year Financial Projection	Year 1 Projection	Year 2 Projection	Year 3 Projection	Year 4 Projection	Year 5 Projection
1. Beginning Cash on Hand	For the current year budget, use the actual cash balance. For all other years, cash on hand should equal item #12 from the previous period.				
a) Unmetered Water Revenue	All cash received or estimated for water supplied to residential, commercial, industrial and public customers where the customer charge is not based on quantity, but is based on other criteria such as diameter of service pipe, room, or foot of frontage.				
b) Metered Water Revenue	All cash received or estimated for water supplied to residential, commercial, industrial, and public customers where the charge is based on quantity of water delivered.				
c) Other water revenues	Other cash received or estimated from sales of water, sales for irrigation, sales for resale, inter-municipal sales, or ad valorem taxes.				
d) Total Water Revenues	Total 1(a) thru 1(c)				
e) Connection Fee	All cash received or estimated for connection of customer service during the year.				
f) Interest and Dividend Income	All cash received or estimated on interest income from securities, loans, notes, and similar instruments, whether the securities are carried as investments or included in sinking or reserve accounts.				
g) Other income	Other revenues collected or estimated during the period (such as disconnection or change in service fees, profit on materials billed to customers, servicing of customer lines, late payment fees, rents, sales of assets, or ad valorem taxes (infrastructure portion)).				
h) Total Cash Revenues	Add 1(d) thru 1(g)				
i) Additional Revenues Needed	Additional cash needed to cover cash needs.				
j) Loans, Grants or other Cash Injections	Includes loans or grants from financial institutions, inter-municipal loans, state or federal sources.				
2. Total Cash Balance	Add items 1(h) thru 1(j)				
3. Total Cash Available	Add items 1 and 2				
4. Operating Expenses	Use actual amounts paid when completing the prior year. Estimate the amounts for projected years based on prior year amounts, trends, and other known variables.				
a) Salaries and wages	Cash expenditures made or estimated for salaries, bonuses, and other considerations for work related to the operation and maintenance of the facility, including administration and compensation for officers and directors.				
b) Employee Pensions and Benefits	Paid vacations, paid sick leave, health insurance, unemployment insurance, pension plan, and other similar liabilities.				
c) Utilities	Amounts paid or estimated for all fuel or electrical power.				
d) Chemicals	Amounts paid or estimated for chemicals used in treatment and distribution.				
e) Materials and Supplies	Amounts paid or estimated for materials and supplies used for operation and maintenance of the new public water system other than those under contractual services.				
f) Laboratory	Amounts paid or estimated for laboratory and associated services.				

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g) Contractual Services	Amounts paid or estimated for outside engineering, accounting, legal, managerial, and other services.
h) Insurance	Amounts paid or estimated for vehicle, liability, worker's compensation, and other insurance associated with the public water system.
i) Miscellaneous	Amounts paid or estimated for all expenses not included elsewhere (such as permit fees, training, and certification fees).
j) Total operation and maintenance expenditures	Add amounts in lines 4(a) thru 4(i).
k) Replacement expenditures	Amounts paid or estimated for replacement of equipment to maintain system integrity (capital improvement plan).
l) Total Operations and Maintenance expenditures plus Replacement expenditures	Add amounts in 4(j) and 4(k)
m) Loan Principal, Capital Lease or Loan payment	Include cash payments made or estimated for principal and interest on all loans, including vehicle loans and equipment on time payments, and capital lease payments.
n) Loan Interest payments	Include cash payments made or estimated for interest on all loans, including vehicle loans, and equipment on time payments, and capital lease payments.
o) Capital Purchases	Amount of cash outlays or estimates for items such as equipment, building, or vehicle purchases and leasehold improvements that were not a part of the initial design of the water system.
5) Total Cash Paid Out	Add amounts in 4(m) thru 4(o)
6) Total Cash Available Minus Expenditures Calculation	Take Amount in 1 and subtract Amount in 5. If this amount is positive, there is operating cash left over after all calculated expenditure obligations have been met. If the number is negative, there are more expenses than there are funds available to pay for the expenses to operate the water system.
7) Number of Customer Accounts	Use most recent system data or expected increases.
8) Average User Charge per Customer	Take amount listed in 1(d) and divide it by amount listed in 7.
9) Coverage Ratio	Take amount in 1(h) and subtract the amount in 4(l). Then divide that amount with the sum of 4(m) + 4(n). The equation looks like this: $[1(h) - 4(l)] \div [4(m) + 4(n)]$ and measures the sufficiency of net operating profit to cover the debt service requirements of the system. A bond covenant might require the debt service to meet or exceed certain limits.
10) Operating Ratio	Take amount in 1(d) and divide it by the amount in 4(l). The equation looks like this: $1(d) \div 4(l)$. This figure measures whether operating revenues are sufficient to cover operation, maintenance, replacement expenses. An operating ratio of 1:0 is the minimum for a self-supporting facility. If there are debt service requirements, the operating ratio would have to be higher.
11) End of Year Operating Cash	All non-reserved cash. Add amounts from 6 thru 12.
12) End of Year Reserves	Do not include depreciation as a reserve unless there is actually a designated depreciation reserve containing cash set aside for future expansion.
a) Operating Cash Reserve	Funds set aside to meet cash flow, operating, and seasonal fluctuations.

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b) Debt Service Reserve	Funds specifically set aside to retire debt as it is scheduled.
c) Capital Improvement Reserve	Funds specifically set aside to meet long-term objectives for a major facility expansion, improvement, or the construction of a new facility.
d) Replacement Reserves	Funds specifically set aside for the future replacement of equipment needed to maintain the integrity of the facility over the useful life of the equipment.
e) Total End of Year Reserves	Add amounts 12 (a) thru 12 (d).

Historical Note

Appendix C adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

Appendix D. Water System Financial Viability Tests

Water System Financial Viability Tests

Test 1: Will the proposed water system collect sufficient revenues to meet all of its projected expenses?

Measurements:

- a. Total Revenues - Total Expenses = Net Income > 0
- b. Total Revenues - One-Time Revenues - Interest Income - Other Income = Operating Revenues
- c. Total Expenses - One-Time Expenditures - Debt Service - Capital Outlays = Operating Expenditures
- d. Operating Revenues - Operating Expenses = Net Revenues > 0
- e. Operating Ratio = Operating Expenses ≤ 1 Operating Revenues

Test 2: Will the proposed water system generate reserves?

The following measurements shall be > 0 at the time submitted:

- a. Operating Cash Reserve = \$ _____
- b. Replacement Reserve = \$ _____
- c. Working Capital = Current Assets - Current Liabilities

Test 3: Are the proposed rates reasonable compared to the median household income of the area to be served?

The following measurement shall be:

Average Annual Rates < Median Household Income* x 2.5%.

*The sources of median household income data include the most recent United States Census Bureau (USCB) data collected by the Department or generated by an impartial third party experienced in collecting income data and supplied to the Department by the applicant seeking viability determinations. Acceptable sources of income data, other than USCB data include feasibility studies, engineering reports, market studies, income surveys, or another source or collection methodology approved by the Department.

Historical Note

Appendix D adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999; Test 1(e) amended to correct a manifest clerical error (Supp. 99-4).

ARTICLE 7. REPEALED**R18-4-701. Repealed****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Section R18-4-701 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-702. Repealed**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Section R18-4-702 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-703. Repealed**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-703 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-704. Repealed**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Clarifying words “of Article 1” added to subsection (A)(1) (Supp. 04-1). Section R18-4-703 and Table 1 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-705. Repealed**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-705 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-706. Repealed**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-706 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-707. Repealed**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-707 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-708. Repealed**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-708 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-709. Repealed**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-709 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-710. Repealed**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Section R18-4-710 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

Appendix A. Repealed**Historical Note**

New Appendix adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Appendix A repealed by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3).

Appendix B. Repealed**Historical Note**

New Appendix adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Former Appendix B renumbered to Appendix C; new Appendix B made by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Appendix B repealed by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3).

Appendix C. Repealed**Historical Note**

New Appendix C renumbered from Appendix B by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Appendix C repealed by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3).

ARTICLE 8. TECHNICAL ASSISTANCE**R18-4-801. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 262, effective December 27, 2001 (Supp. 01-4). Section R18-4-801 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-802. Technical Assistance Plan

The Department shall include a technical assistance plan in the capacity development report it publishes annually. The technical assistance plan shall include a description of the types of technical assistance the Department expects to provide, the sources and uses of technical assistance, and a master priority list.

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Historical Note

New Section made by final rulemaking at 8 A.A.R. 262, effective December 27, 2001 (Supp. 01-4).

R18-4-803. Master Priority List

- A. Each year the Department shall develop a master priority list that ranks public water systems according to their need for technical assistance.
- B. The Department shall rank public water systems on the master priority list based on consideration of the following criteria:
 - 1. Size of population served,
 - 2. Type of public water system,
 - 3. Type of ownership,
 - 4. Water source (surface water or ground water),
 - 5. Participation in the monitoring assistance program,
 - 6. History of major monitoring or reporting deficiencies,
 - 7. History of acute or non-acute MCL violations,
 - 8. History of operation or maintenance violations,
 - 9. Lack of a certified operator,
 - 10. Prior assistance from the Department or the Water Infrastructure Finance Authority within the last five years, and
 - 11. Any or other measurable objective criteria related to the technical, managerial, or financial capacity of a public water system.
- C. If all other criteria are equal, the Department shall assign priority to public water systems with the most operation or maintenance violations.

- D. The Department shall publish the master priority list annually in the Arizona Administrative Register and hold an oral proceeding to obtain public comment on the master priority list.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 262, effective December 27, 2001 (Supp. 01-4).

R18-4-804. Technical Assistance Awards

- A. The Department shall award technical assistance to the public water systems with the highest ranking on the master priority list, as funding permits.
- B. The Department may provide technical assistance directly, or the Department may employ a consultant to provide the assistance.
- C. If a public water system refuses technical assistance offered by the Department, or the Department determines that a public water system is not able to proceed with technical assistance within the next fiscal year, the Department shall bypass the public water system on the master priority list. The Department shall replace a bypassed public water system with the public water system next in line to receive technical assistance in accordance with the priority criteria in R18-4-803(B).

Historical Note

New Section made by final rulemaking at 8 A.A.R. 262, effective December 27, 2001 (Supp. 01-4).

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.

49-202. Designation of state agency

A. The department is designated as the agency for this state for all purposes of the clean water act, including section 505, the resource conservation and recovery act, including section 7002, and the safe drinking water act. The department may take all actions necessary to administer and enforce these acts as provided in this section, including entering into contracts, grants and agreements, adopting, modifying or repealing rules, and initiating administrative and judicial actions to secure to this state the benefits, rights and remedies of such acts.

B. The department shall process requests under section 401 of the clean water act for certification of permits required by section 404 of the clean water act in accordance with subsections C through I of this section. Subsections C, D, G and I of this section apply to the certification of nationwide or general permits issued under section 404 of the clean water act. If the department has denied or failed to act on certification of a nationwide permit or general permit, subsections C through I of this section apply to the certification of applications for or notices of coverage under those permits.

C. The department shall review the application for section 401 certification solely to determine whether the effect of the discharge will comply with the water quality standards for WOTUS established by department rules adopted pursuant to section 49-221, subsection A, and section 49-222. The department's review shall extend only to activities conducted within the ordinary high watermark of WOTUS. To the extent that any other standards are considered applicable pursuant to section 401(a)(1) of the clean water act, certification of these standards is waived.

D. The department may include only those conditions on certification under section 401 of the clean water act that are required to ensure compliance with the standards identified in subsection C of this section. The department may impose reporting and monitoring requirements as conditions of certification under section 401 of the clean water act only in accordance with department rules.

E. The department may request supplemental information from the section 401 certification applicant if the information is necessary to make the certification determination pursuant to subsection C of this section. The department shall request this information in writing. The request shall specifically describe the information requested. After receipt of the applicant's written response to a request for supplemental information, the department shall either issue a written determination that the application is complete or request specific additional information. The applicant may deem any additional requests for supplemental information as a denial of certification for the purposes of subsection I of this section. In all other instances, the application is complete on submission of the information requested by the department.

F. The department shall grant or deny section 401 certification and shall send a written notice of the department's decision to the applicant after receipt of a complete application for certification. Written notice of a denial of section 401 certification shall include a detailed description of the reasons for denial.

G. The department may waive its right to certification by giving written notice of that waiver to the applicant. The department's failure to act on an application is deemed a waiver pursuant to this subsection and section 401(a)(2) of the clean water act.

H. The department shall adopt rules specifying the information the department requires an applicant to submit under this section in order to make the determination required by subsections C and D of this section. Until these rules are adopted, the department shall require an applicant to submit only the following information for certification under this section:

1. The name, address and telephone number of the applicant.
2. A description of the project to be certified, including an identification of the WOTUS in which the certified activities will occur.
3. The project location, including latitude, longitude and a legal description.

4. A United States geological service topographic map or other contour map of the project area, if available.
5. A map delineating the ordinary high watermark of WOTUS affected by the activity to be certified.
6. A description of any measures to be applied to the activities being certified in order to control the discharge of pollutants to WOTUS from those activities.
7. A description of the materials being discharged to or placed in WOTUS.
8. A copy of the application for a federal permit or license that is the subject of the requested certification.

I. Pursuant to title 41, chapter 6, article 10 an applicant for certification may appeal a denial of certification or any conditions imposed on certification. Any person who is or may be adversely affected by the denial of or imposition of conditions on the certification of a nationwide or general permit may appeal that decision pursuant to title 41, chapter 6, article 10.

J. Certification under section 401 of the clean water act is automatically granted for quarrying, crushing and screening of nonmetallic minerals in ephemeral waters if all of the following conditions are satisfied within the ordinary high watermark of jurisdictional waters:

1. There is no disposal of construction and demolition wastes and contaminated wastewater.
2. Water for dust suppression, if used, does not contain contaminants that could violate water quality standards.
3. Pollution from the operation of equipment in the mining area is removed and properly disposed.
4. Stockpiles of processed materials containing ten percent or more of particles of silt are placed or stabilized to minimize loss or erosion during flow events. For the purposes of this paragraph, "silt" means particles finer than 0.0625 millimeter diameter on a dry weight basis.
5. Measures are implemented to minimize upstream and downstream scour during flood events to protect the integrity of buried pipelines.
6. On completion of quarrying operations in an area, areas denuded of shrubs and woody vegetation are revegetated to the maximum extent practicable.

K. For the purposes of subsection J of this section, "ephemeral waters" means waters of the state that have been designated as ephemeral in rules adopted by the department.

L. Certification under section 401 of the clean water act is automatically granted for any license or permit required for:

1. Corrective actions taken pursuant to chapter 6, article 1 of this title in response to a release of a regulated substance as defined in section 49-1001 except for those off-site facilities that receive for treatment or disposal materials that are contaminated with a regulated substance and that are received as part of a corrective action.
2. Response or remedial actions undertaken pursuant to chapter 2, article 5 of this title or pursuant to CERCLA.
3. Corrective actions taken pursuant to the resource conservation and recovery act of 1976, as amended (42 United States Code sections 6901 through 6992).
4. Other remedial actions that have been reviewed and approved by the appropriate government authority and taken pursuant to applicable federal or state laws.

M. The department of environmental quality is designated as the state water pollution control agency for this state for all purposes of CERCLA, except that the department of water resources has joint authority with the

department of environmental quality to conduct feasibility studies and remedial investigations relating to groundwater quality and may enter into contracts and cooperative agreements under section 104 of CERCLA for such studies and remedial investigations. The department of environmental quality may take all action necessary or appropriate to secure to this state the benefits of the act, and all such action shall be taken at the direction of the director of environmental quality as the director's duties are prescribed in this chapter.

N. The director and the department of environmental quality may enter into an interagency contract or agreement with the director of water resources under title 11, chapter 7, article 3 to implement the provisions of section 104 of CERCLA and to carry out the purposes of subsection M of this section.

49-351. Designation of responsible state agency

A. The department of environmental quality is designated as the responsible agency for this state to take all actions necessary or appropriate to ensure that all potable water distributed or sold to the public through public water systems is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease causing substances or organisms. All such actions shall be taken at the direction of the director of the department.

B. All state agencies and any local health agencies involved with water quality, at the request of the director, shall provide to the department any assistance requested to ensure that this article is effectuated.

49-352. Classifying systems and certifying personnel; limitation

A. The department shall establish and enforce rules for the classification of systems for potable water and certifying operating personnel according to the skill, knowledge and experience necessary within the classification. The rules shall also provide that operating personnel may be certified on the basis of training and supervision at the place of employment. The department may assess and collect reasonable certification fees to reimburse the cost of certification services, which shall be deposited in the water quality fee fund established by section 49-210. Such rules apply to all public water systems involved in the collection, storage, treatment or distribution of potable water. The rules do not apply to systems that are not public water systems, including irrigation, industrial or similar systems where the water is used for nonpotable purposes.

B. For the purposes of this article:

1. A public water system is a water system that:

(a) Provides water for human consumption through pipes or other constructed conveyances.

(b) Has at least fifteen service connections or regularly serves an average of at least twenty-five persons daily for at least sixty days a year.

2. A public water system as described in paragraph 1, subdivisions (a) and (b) of this subsection includes any collection, treatment, storage and distribution facilities that are under the control of the operator of a public water system and that are used primarily in connection with the system and any collection or pretreatment storage facilities that are not under the control of the operator of a public water system and that are used primarily in connection with a public water system.

3. A service connection does not include a connection to a system that delivers water by a constructed conveyance other than a pipe, if any of the following applies:

(a) The water is used exclusively for purposes other than residential uses consisting of drinking, cooking or bathing or other similar uses.

(b) The department determines that alternative water is provided for residential or similar uses for drinking and cooking and that the water achieves a level of public health protection that is equivalent to the applicable national primary drinking water regulations.

(c) The department determines that the water that is provided for residential or similar uses for drinking, cooking and bathing is centrally treated or is treated at the point of entry by the water provider, a pass-through entity or the user to achieve the level of public health protection that is equivalent to the applicable national primary drinking water regulations.

4. An irrigation district in existence before May 18, 1994 and that provides primarily agricultural service through a piped water system with only incidental residential or similar use is not a public water system if the system or the residential or other similar users of the system comply with paragraph 3, subdivision (b) or (c) of this subsection.

5. Persons who receive water through connections that are not service connections pursuant to paragraph 3 of this subsection are not included in the computation of the number of persons prescribed by paragraph 1, subdivision (b) of this subsection.

49-353. Duties of director; rules; prohibited lead use

A. The director shall:

1. Exercise general supervision over all matters related to water quality control of public water systems throughout this state.

2. Prescribe rules regarding the production, treatment, distribution and testing of potable water by public water systems, except that such rules shall not apply to irrigation, industrial or similar systems where the water is used for nonpotable purposes. The rules shall comply with at least the following:

(a) The requirements established by the United States environmental protection agency for state primary enforcement responsibility of the safe drinking water act, including the requirements of 40 Code of Federal Regulations parts 141 and 142.

(b) Require that the plans and specifications for all public water systems, including water treatment plants, distribution systems, distribution system extensions, water treatment methods and devices and all appurtenances and devices for sale to be used in water supplies and public water systems be submitted with a fee for review to the department. The department, 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. Monies collected from the fees shall be deposited in the water quality fee fund established by section 49-210. The director may require that plans and specifications for public water systems include programs to meet future needs for drinking water and to supply specified minimum quantities of drinking water. The director shall:

(i) Require that a new public water system demonstrate that the system possesses adequate managerial and financial capacity to operate in compliance with this article and the rules adopted pursuant to this article.

(ii) Accept adequate findings of other public authorities regarding the adequate managerial and financial capacity of a public water system to operate in compliance with this article and the rules adopted pursuant to this article.

(c) Provide that no public water system, including a water treatment plant, distribution system, distribution system extension, water treatment method or device, appurtenance and device used in water supplies or public water systems be constructed, reconstructed, installed or initiated before compliance with the standards and rules has been demonstrated by approval of the plans and specifications by the department. The rules shall prescribe minimum standards for the bacteriological, physical and chemical quality of water distributed through public water systems. The director of environmental quality may consult with the director of the department of health services in developing these standards.

(d) Provide for a simplified administrative procedure for approving structural revisions, additions, extensions or modifications to existing small public water systems for potable water serving a population of three thousand three hundred or fewer persons.

(e) Exempt from the plan review requirements of this paragraph, including any requirements for approval to construct or approval of construction, any structural revisions, additions, extensions or modifications to public water systems which are in compliance with the department's rules applicable to those systems or which are making satisfactory progress towards compliance under a schedule approved by the department if either of the following conditions is satisfied:

(i) The revision, addition, extension or modification has a project cost of twelve thousand five hundred dollars or less.

(ii) The revision, addition, extension or modification is made to a water line which is not for a subdivision requiring plat approval by a city, town or county, and has a project cost of more than twelve thousand five

hundred dollars but less than fifty thousand dollars, the design of which is sealed by a professional engineer registered in this state and the construction of which is reviewed for conformance with the design by a professional engineer.

- (f) Require a notice of compliance with the conditions for exemption on the completion of any revisions, additions, extensions or modifications completed in accordance with subdivision (e) of this paragraph.
 - (g) Provide for the submission of samples at stated intervals.
 - (h) Provide for inspection and certification of such water supplies.
 - (i) Provide for the abatement as public nuisances of any premises, equipment, process or device, or public water system that does not comply with the minimum standards and rules.
 - (j) Provide for records regarding water quality to be kept by owners and operators of the public water systems and that reports regarding water quality be filed with the department.
 - (k) Provide for appropriate actions to be taken if a water supply does not meet the standards established by the department.
 - (l) Require a public water system to implement a specified program to control contamination from backflow, backsiphonage or cross connection. All such programs shall be consistent with section 37-1388.
 - (m) Require that public water systems identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either or both of the following:
 - (i) The lead content in the construction materials of the public water distribution system.
 - (ii) Corrosivity of the water supply sufficient to cause leaching of lead.
 - (n) Provide for relief from water testing and monitoring requirements for public water systems qualifying under the federal safe drinking water act (P.L. 93-523; 88 Stat. 1661; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613), as amended in 1996.
3. Develop and implement strategies to assist public water systems in acquiring and maintaining the technical, managerial and financial capacity to operate in compliance with this article and the rules adopted pursuant to this article. Assistance may be provided based on the needs of the water system.
- B. Pipes, pipe fittings and plumbing fittings and fixtures having a lead content in excess of a weighted average of one-quarter of one percent lead when used with respect to the wetted surfaces and solders and flux having a lead content in excess of two-tenths of one percent shall not be used in the installation or repair of public water systems or of any plumbing in residential or nonresidential facilities providing water for human consumption. The weighted average lead content of a pipe, pipe fitting or plumbing fitting or fixture shall be calculated as follows:
- 1. For each wetted component, the percentage of lead in the component shall be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component.
 - 2. The weighted percentage of lead of each wetted component shall be added together, and the sum of these weighted percentages shall constitute the weighted average lead content of the product.
 - 3. The lead content of the material used to produce a wetted component shall be used to determine compliance with this subsection.
 - 4. For lead content of materials that are provided as a range, the maximum content of that range shall be used.

C. Subsection B of this section does not apply to:

1. Leaded joints necessary for the repair of cast iron pipes.
2. Pipes, pipe fittings and plumbing fittings and fixtures, including backflow preventers, that are used exclusively for nonpotable water services such as manufacturing, industrial processing, irrigation, outdoor watering or any other uses where the water is not anticipated to be used for human consumption.
3. Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves or service saddles or water distribution main gate valves that are two inches in diameter or larger.

D. Notwithstanding subsection A, paragraph 2, subdivision (c) of this section, a public water system may construct, reconstruct, install, extend or initiate a water supply system, water treatment plant, distribution system, water treatment method or device, or appurtenance that is used in water supply or in a public water system when the system is out of compliance with standards and rules adopted pursuant to this article only if the construction is necessary to correct the system's noncompliance.

E. This section and the rules adopted pursuant to this section apply to public water systems as described by section 49-352, subsection B.

49-353.01. Duties of director; rules; standards; water supply; definition

A. The director shall adopt rules which prescribe minimum standards for the:

1. Sanitary facilities and conditions that shall be maintained by any public water system.
2. Chemicals, additives and drinking water system components that come into contact with drinking water that is used by any domestic or industrial water supply and that is sold or distributed to the public.

B. Chemicals and additives certified as conforming to the national sanitation foundation standards comply with the standards required by this section.

C. In those instances where chemicals, additives and drinking water system components that come into contact with drinking water are essential to the design, construction or operation of the drinking water system and have not been certified by the national sanitation foundation or have national sanitation foundation certification but are not available from more than one source, the standards shall provide for the use of alternatives which include:

1. Chemicals and additives composed entirely of ingredients determined by the environmental protection agency, the food and drug administration or other federal agencies as appropriate for addition to potable water or aqueous food.
2. Chemicals and additives composed entirely of ingredients listed in the national academy of sciences water chemicals codex.
3. Chemicals, additives and drinking water system components consistent with the specifications of the American water works association.
4. Chemicals, additives and drinking water system components that are designed for use in drinking water systems and that are consistent with the specifications of the American society for testing and materials.
5. Drinking water system components that are historically used or in use in drinking water systems consistent with standard practice and that have not been demonstrated during past applications in the United States to contribute to water contamination.

D. Except as identified by the department as an alternative in accordance with this section at or after the time of use or installation, drinking water system components installed and used after January 1, 1993 shall conform to the national sanitation foundation standards.

E. The director of the department of environmental quality may consult with the director of the department of health services in developing the standards prescribed by this section.

F. For the purposes of this section, "drinking water system components" means equipment and materials that are used in a drinking water system, including process media, protective materials, joining and sealing materials, pipes and related products, mechanical devices and mechanical plumbing devices.

49-354. Enforcement; violation; classification; compliance orders; judicial review; injunctive relief; civil administrative penalties; civil penalties

A. A person who violates this article or a rule adopted pursuant to this article is guilty of a class 2 misdemeanor for each violation. In the instance of a continuing violation, each day a violation continues constitutes a separate offense.

B. If the director determines that a person is in violation of this article or a rule adopted pursuant to this article, the director may issue an order requiring compliance immediately or within a specified time period. A compliance order shall state with reasonable specificity the nature of the violation, a time for compliance if applicable and the right to a hearing. The director shall transmit the compliance order to the alleged violator by certified mail, return receipt requested, or by hand delivery. A compliance order becomes final and enforceable in the superior court unless within thirty days after the receipt of the order the alleged violator requests a hearing before an administrative law judge pursuant to title 41, chapter 6, article 10. If a hearing is requested, the order does not become final until the administrative law judge has issued a final decision on the appeal. Except as provided in section 41-1092.08, subsection H, a final administrative decision is subject to judicial review pursuant to title 12, chapter 7, article 6. At the request of the director, the attorney general may begin an action in superior court to enforce orders issued under this subsection after an order becomes final.

C. If the director determines that a person is in violation of this article or a rule adopted pursuant to this article to implement the requirements contained in 40 Code of Federal Regulations parts 141 and 142, including the national primary drinking water regulations, the director may issue a compliance order pursuant to subsection B of this section imposing a civil administrative penalty. All penalty amounts shall be calculated as follows:

1. If the violator is a public water system that serves more than ten thousand persons, the director may impose a civil administrative penalty of up to \$1,000 per day per violation up to \$10,000 per violation.
2. If the violator is a public water system that serves five hundred to ten thousand persons, the director may impose a civil administrative penalty that does not exceed \$500 per day per violation up to \$5,000 per violation.
3. If the violator is a public water system that serves fewer than five hundred persons, the director may impose a civil administrative penalty that does not exceed \$100 per day per violation up to \$1,000 per violation.

D. When determining the amount of a civil administrative penalty pursuant to subsection C of this section, the director shall consider all of the following:

1. The size of the public water system.
2. Any good faith effort by the public water system to maintain compliance with national primary drinking water regulations.
3. The seriousness of the violation.
4. Any history of violation of the national primary drinking water regulations.
5. Any history of recalcitrance by the violator.
6. Any economic benefit resulting from the violation, as an aggravating factor only.
7. Any other factor deemed relevant.

E. For a public water system that is regulated as a public service corporation by the corporation commission, the department shall make a written request to the chairperson and executive director of the corporation commission to take necessary corrective actions, and the corporation commission shall commence necessary corrective actions within thirty calendar days after both of the following conditions occur:

1. The department does any one or more of the following:

(a) Determines that the facility is out of compliance with an administrative order issued by the department for a violation of this chapter.

(b) Files a civil action against the owner or operator of the public water system for a violation of this chapter.

(c) Determines that an emergency exists with respect to the public water system.

2. The department determines that the corporation commission taking necessary corrective actions would expedite the public water system's return to compliance with this chapter.

F. If the department makes a written request to the corporation commission as prescribed by subsection E of this section, the department shall provide a copy of the request to the governing body of any local jurisdiction with residents served by the facility or system that is the subject of the request.

G. Civil administrative penalties may not be recovered pursuant to subsection C of this section if civil penalties are sought pursuant to subsection I of this section for the same violation.

H. All civil administrative penalties obtained pursuant to subsection C of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

I. In addition to the authority provided in subsection C of this section, the attorney general may, and at the request of the director shall, begin an action in superior court to recover civil penalties in an amount of not more than \$500 per violation per day from any person who violates this article or a rule adopted pursuant to this article. All civil penalties obtained under this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund. Civil penalties may not be recovered pursuant to this subsection if civil administrative penalties are sought pursuant to subsection C of this section for the same violation.

J. If the director has reason to believe that a person is in violation of this article or a rule adopted or an order issued pursuant to this article or believes that a person is creating an actual or potential endangerment to the public health because of acts performed in violation of this article or a rule adopted pursuant to this article, the director, through the attorney general, may request a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief necessary to protect the public health.

49-358. Water system compliance assistance program

A. The department shall establish a water system compliance assistance program to assist water systems in complying with standards imposed by federal and state law, rules and regulations. The program shall provide information and technical assistance to water systems.

B. The department may contract with a nonprofit organization which provides on-site technical assistance to small water systems and which is dedicated to preserving and enhancing water quality in Arizona.

49-360. Monitoring assistance program for public water systems; fees; monitoring assistance fund; safe drinking water program fund; rules

A. The department shall establish a monitoring assistance program to assist public water systems in complying with monitoring requirements under the federal safe drinking water act (P.L. 93-523; 88 Stat. 1660; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613; 42 United States Code sections 300f through 300j-25), as amended. The program shall provide for the collection, transportation and analysis of baseline samples from public water systems in a frequency sufficient to keep the systems in compliance with the federal safe drinking water act requirements. At a minimum, the program shall include monitoring for the following categories of contaminants:

1. Volatile organic chemicals.
2. Synthetic organic chemicals.
3. Inorganic chemicals except for copper and lead.
4. Radiochemicals.

B. The department shall contract with one or more private parties or statewide nonprofit organizations representing water systems to implement the monitoring assistance program subject to available funding. Contracts shall be awarded for up to three years. Entities with which the department contracts shall:

1. Provide updated monitoring schedules, developed in conjunction with the department, to participating water systems.
2. Take samples for participating water systems, allow for certified operators to take samples and train system personnel to take samples.
3. Assist participating water systems when resampling is required by the federal safe drinking water act.
4. Assist participating water systems to apply for and qualify for available interim monitoring relief and waivers.
5. Provide any other on-site technical assistance necessary to help the participating water systems comply with the monitoring requirements of the federal safe drinking water act.

C. Any public water systems serving more than ten thousand persons may elect to participate in the monitoring assistance program subject to the payment of the fees pursuant to subsection F of this section.

D. The department shall use licensed environmental laboratories as defined in section 36-495 or laboratories certified or designated by the United States environmental protection agency to analyze samples collected under the monitoring assistance program. The department shall establish specific criteria for measuring contractor qualifications and performance.

E. Each environmental laboratory that the department uses pursuant to subsection D of this section shall deliver copies of the analysis results to the water system owner, the monitoring assistance program contractor and the department.

F. The director shall establish fees for the monitoring assistance program to be collected from all public water systems serving up to ten thousand persons. The participating water systems shall remit these fees to the department for deposit in the monitoring assistance fund.

G. The monitoring assistance fund is established consisting of fees collected from participating public water systems pursuant to subsection F of this section. The director shall administer the fund. If the fund has a surplus after execution of the previous year's contract, any surplus in excess of \$200,000 in any year shall be used to

reduce the fee for the subsequent year in a manner consistent with the program invoicing system. Monies in the fund shall be used to pay the monitoring assistance program contractors, the environmental laboratories used for the purposes of this section and administrative costs incurred by the department. Monies in the fund are exempt from lapsing pursuant to section 35-190. Interest earned on monies in the fund shall be credited to the fund. The allowable administrative costs of the department are limited to not more than fifteen percent of monies deposited in the fund annually or one hundred eighty-four thousand dollars, whichever is less. For the purposes of this subsection, "administrative costs" includes only those costs necessary to do the following:

1. Ensure contractor performance and quality control.
2. Administer the contracts.
3. Collect fees as provided in subsection F of this section.
4. Provide direct technical assistance related to the implementation of the monitoring assistance program only to the extent the department's assistance is required by this section.

H. The safe drinking water program fund is established consisting of monies deposited in the fund pursuant to section 42-5304. The director shall administer the fund. Subject to legislative appropriation, monies in the fund shall be used to pay for the costs of programs required by this article incurred by the department. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations. Interest earned on monies in the fund shall be credited to the fund.

I. The department shall adopt rules for the monitoring assistance program.

J. Any site visit made pursuant to this section by a monitoring assistance program contractor shall not be regarded as an inspection or investigation. Enforcement actions shall not be taken as a result of these site visits, except that this section does not affect the authority of the department to enforce this article pursuant to section 49-354.

ARIZONA COMMISSION ON THE ARTS

Title 2, Chapter 2, Articles 1-2



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 2, 2022; October 4, 2022

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

FROM: Council Staff

DATE: September 20, 2022

SUBJECT: COMMISSION ON THE ARTS
Title 2, Chapter 2, Articles 1-2

Summary

This Five-Year Review Report (5YRR) from the Commission on the Arts (Commission) relates to rules in Title 2, Chapter 2, Articles 1-2, regarding Matching Private Monies With Monies From the Arizona Arts Endowment Fund and Grantmaking Procedures for Grants From the Arizona Arts Trust Fund. The rules in Article 1 address the requirements, considerations and procedures the Commission takes when matching private money from the Arizona Arts Endowment Fund. The rules in Article 2 define who is eligible for funding from the Arizona Arts Trust Fund, the criteria that is used when granting funds, and outlines the process for obtaining a grant from the Arizona Arts Trust Fund.

In the previous 5YRR for these rules, which the Council approved in 2017, the Commission did not propose a course of action for the rules.

Proposed Action

The Commission is not proposing any changes to the rules.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes, the Commission cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Arizona Commission on the Arts believes that the impact of the rules is thoroughly consistent with the economic impact statement submitted with the original rulemaking package.

Stakeholders include the Commission and applicants obtaining funds from the Arizona Arts Trust Fund.

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 Arizona Commission on the Arts has compared all six rules to those of other state arts agencies and determined that they all impose the least burden and cost to the applicants and are on par with practices in similar agencies.

4. Has the agency received any written criticisms of the rules over the last five years?

No, the Commission has not received 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 indicates that the rules are clear, concise and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes, the Commission indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Yes, the Commission indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

Yes, the Commission states 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 Commission indicates that 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 Commission indicates that the rules do not require a permit or license.

11. Conclusion

This 5YRR from the Commission on the Arts relates to rules in Title 2, Chapter 2, Articles 1-2, regarding Matching Private Monies With Monies From the Arizona Arts Endowment Fund and Grantmaking Procedures for Grants From the Arizona Arts Trust Fund. The Commission indicates the rules are clear, concise, understandable, consistent, effective and enforced as written. The Commission does not intend to take any action regarding these rules.

Council staff finds that the Board submitted an adequate report that meets the requirements of A.R.S. § 41-1056. Council staff recommends approval of this report.

May 27, 2022

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Commission on the Arts, Five-Year-Review Report for A.A.C. Title 2, Chapter 2, Articles 1 & 2

Dear Ms. Sornsins,

Please find enclosed the Five-Year-Review Report of the Arizona Commission on the Arts for A.A.C. Title 2, Chapter 2, Articles 1 & 2, which is due on or before May 31, 2022.

The Arizona Commission on the Arts hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact me at alecuyer@azarts.gov or 602-771-6520.

Sincerely,



Anne L'Ecuyer
Executive Director

Arizona Commission on the Arts
5 YEAR REVIEW REPORT
A.A.C. Title 2. Chapter 2. Articles 1 & 2
July 13, 2022

Unless otherwise noted, the information discussed below is identical for all six rules.

1. Authorization of the rule by existing statutes

Article 1 (MATCHING PRIVATE MONIES WITH MONIES FROM THE ARIZONA ARTS ENDOWMENT FUND):

- General Statutory Authority: A.R.S § 41-986(E)
- Specific Statutory Authority: A.R.S § 41-986

Article 2 (GRANTMAKING PROCEDURES FOR GRANTS FROM THE ARIZONA ARTS TRUST FUND):

- General Statutory Authority: A.R.S § 41-982(B)(5) and 41-983.02(B)
- Specific Statutory Authority: A.R.S § 41-983.01 and 41-983.02

2. The objective of each rule:

Article 1:

Rule	Objective
R2-2-101. Definitions	This rule defines the terms used by the Commission in carrying out the intent of the article.
R2-2-102. Matching Private Monies	This rule outlines the requirements, considerations and procedures that the Commission follows when matching private monies with monies from the Arizona Arts Endowment Fund.

Article 2:

In general terms, all four rules provide procedures to be followed by the Arizona Commission on the Arts [“Commission”], its staff and grant review panels in receiving, considering and reviewing applications for, and distribution of, general operating support grants from the Arizona Arts Trust Fund.

Rule	Objective
R2-2-201. Definitions	This rule defines the terms used by the Commission in carrying out the intent of the program.
R2-2-202. Eligibility	This rule defines who is eligible for support with funds from the Arizona Arts Trust Fund, based on the following five requirements: applicants are to be based in Arizona; must be a government entity, or a designated nonprofit (or using a nonprofit fiscal agent); adhere to a maximum number of applications per year as published in Commission guidelines; match grant funds; and meet arts service provision requirements.
R2-2-203. Criteria	This rule defines the criteria which are used when granting funds from the Arizona Arts Trust Fund. The criteria in this rule are published in relevant guidelines and used by grant review panels and commissioners when reviewing and approving grant applications.
R2-2-204. Process for Obtaining A Grant from the Arizona	This rule lays out the process for obtaining a grant from the Arizona Arts Trust Fund. It notes deadlines for submission of applications and the review process. The clear review process allows constituents from across the state to understand how the Commission reviews applications and makes grant decisions.

3. Are the rules effective in achieving their objectives?

Yes X

No

All six rules are effective in achieving the objectives of the agency.

4. Are the rules consistent with other rules and statutes? Yes X No
The only relevant statutes are the Arizona Revised Statutes listed under Item 1 in this report. All rules are consistent with state statutes.
5. Are the rules enforced as written? Yes X No
6. Are the rules clear, concise, and understandable? Yes X No
All six rules are clear, concise and understandable. They are readable and grammatically correct.
7. Has the agency received written criticisms of the rules within the last five years? Yes No X
The agency has not received any criticisms regarding the six rules in the last five years.
8. Economic, small business, and consumer impact comparison:
According to our information and observation, the impact of these rules is thoroughly consistent with the economic impact statement submitted with the original rulemaking package.
9. Has the agency received any business competitiveness analyses of the rules? Yes No X
There has been no outside analysis regarding this area. We as an agency regularly compare our programs and related rules to other states and find that ours are regularly and significantly less complicated and onerous.
10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?
The Arts Commission completed a successful five-year review in 2017. No necessary actions were identified in the agency's previous 5 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 Arts Commission has compared all six rules to those of other state arts agencies and determined that they all impose the least burden and cost to our applicants and are on par with practices in similar agencies.
12. Are the rules more stringent than corresponding federal laws? Yes No X
The Arts Commission reviewed all six rules and determined that they are all less stringent than corresponding federal law.
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:
N/A; no rules require the issuance of a regulatory permit, license, or agency authorization.
14. Proposed course of action:
At this time the Arts Commission is not planning any proposed action in the next five years.



Simon Larscheidt <simon.larscheidt@azdoa.gov>

GRRC Study Session Follow-Up

Anne L'Ecuyer <alecuyer@azarts.gov>

Mon, Aug 1, 2022 at 11:36 AM

To: Elizabeth Griffiths <elizabeth.griffiths@azdoa.gov>

Cc: Simon Larscheidt <simon.larscheidt@azdoa.gov>, Hanna Spence-Schehr <hspenceschehr@azarts.gov>

Good morning, Elizabeth, I hope the week is off to a good start.

Thank you for following up on Tuesday's inquiries from the commission. I was surprised to hear questions from rules commissioners when your office recommended approval.

Upon reflection, I gave an incomplete answer in the study session. I should have been better able to easily satisfy those concerns verbally. I apologize, and will clarify here.

In the study session, Commissioners referred to **R2-2-204. Process for Obtaining a Grant from the Arizona Arts Trust Fund**. The concern was about modernizing an outdated application process. Particular clauses in question are (emphasis added):

"The Commission shall establish an annual grant deadline and publish grant guidelines by January 15th of each year. Applications shall be **postmarked or delivered by 5:00 p.m. on the grant deadline date.**"

and

"The Commission **shall provide the forms and formats** for the narrative and budget to the applicant."

In practical terms, these rules do suffice and our operations do comply by providing **both** electronic and paper options for submitting grant applications.

As directed, our process and deadlines are posted here by January 15 each year:

[Grants - Arizona Commission on the Arts \(azarts.gov\)](#)

Further, we provide a steps guide for completing the application process digitally:

[Grantee Resources - Arizona Commission on the Arts \(azarts.gov\)](#)

We prefer to retain the word 'postmarked' in the rules because a backup paper process removes a burden for those constituents who may not have access to digital tools. In practical terms, we process a majority of applications quickly and efficiently online.

Again, we affirm that there is no need for rules revision at this time, as status quo is relief of burden itself. We are a small agency. We do not employ staff attorneys or policy analysts as is typical with larger state agencies. All administration requiring attention to minor adjustments in rules removes that staff time from constituent-focused operations.

We further affirm that the larger rules review requested in the nine-month period is also not necessary, as stated in two previous memos. The agency has a small section of A.R.S code - two articles and six elements of rules by which we carefully abide and which present no current dilemma from the public or the administration.

The agency completed the 5YRR five years ago as requested and did so again in this cycle. We continue to find no reason for any change to statute in the immediate term.

To provide further context, Governor Ducey has appointed five new arts commissioners since February, and five more appointments are under review. I began my new role six months ago. The proper course of action is to heed the direction of the current commission, none of whom have communicated any concern about our rules.

As I mentioned in the meeting, I will agendaize a rules review with the arts commission to contemplate a need for rules changes in the future, which we propose to complete under the regular five-year cycle.

Please do send a calendar invite if further discussion is required. Hanna Spence-Schehr is copied to assist with scheduling.

-Anne

--

Anne L'Ecuyer

Executive Director

tel (602) 771-6520 | email alecuyer@azarts.gov

Arizona Commission on the Arts

An Agency of the State of Arizona

417 West Roosevelt Street | Phoenix AZ 85003-1326

email info@azarts.gov | web www.azarts.gov

[Quoted text hidden]



Simon Larscheidt <simon.larscheidt@azdoa.gov>

Materials for Virtual Study Session on August 30, 2022

Anne L'Ecuyer <alecuyer@azarts.gov>

Tue, Sep 20, 2022 at 7:31 AM

To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

Cc: Anakaren Lemus <anakaren.lemus@azdoa.gov>, Hanna Spence-Schehr <hspenceschehr@azarts.gov>, Alex Nelson <anelson@azarts.gov>

Hi Simon, thank you again for providing time on the upcoming agenda for the Rules Committee work session. My intention is to resolve this matter briefly in the work session so that Rules members may move on to their important and timely work with other agencies. In our August staff meeting you requested an additional memo with further information on digital and paper applications.

Please advise your members to click and review the following two links:

Grant process and deadlines are posted here:

[Grants - Arizona Commission on the Arts \(azarts.gov\)](https://azarts.gov/grants)

Further, we provide a steps guide for completing the application process digitally:

[Grantee Resources - Arizona Commission on the Arts \(azarts.gov\)](https://azarts.gov/grantee-resources)

In FY22, the Arizona Commission on the Arts received approximately 1200 applications and awarded nearly 400 grants. In practical terms most applications are processed through a digital submission system called Submittable which further connects to an agency-wide system on the Salesforce platform. We have used digital grantmaking systems for more than two decades and routinely upgrade the digital and technical capacities of the agency.

In addition, we also provide the ability to complete a paper application in instances when the digital system is inconvenient. The volume of paper applications in any given year is less than 1% of our total applications, however, we continue to make paper applications available as a method of ensuring access to all applicants.

Having reviewed the current rules now for a third time, we affirm that there is no need for changes. If it isn't broken, it doesn't need fixing.

Respectfully submitted,
Anne

[Quoted text hidden]

TITLE 2. ADMINISTRATION

CHAPTER 2. ARIZONA COMMISSION ON THE ARTS

(Authority: A.R.S. § 41-986)

**ARTICLE 1. MATCHING PRIVATE MONIES
WITH MONIES FROM THE ARIZONA ARTS
ENDOWMENT FUND**

Article 1, consisting of Sections R2-2-101 and R2-2-102,
adopted effective September 21, 1998 (Supp. 98-3).

Section

- R2-2-101. Definitions
R2-2-102. Matching Private Monies

**ARTICLE 2. GRANTMAKING PROCEDURES FOR
GRANTS FROM THE ARIZONA ARTS TRUST FUND**

Article 2, consisting of Sections R2-2-201 through R2-2-204,
made by final rulemaking at 8 A.A.R. 406, effective January 9, 2002
(Supp. 02-1).

Section

- R2-2-201. Definitions
R2-2-202. Eligibility
R2-2-203. Criteria
R2-2-204. Process for Obtaining A Grant from the Arizona
Arts Trust Fund

**ARTICLE 1. MATCHING PRIVATE MONIES
WITH MONIES FROM THE ARIZONA ARTS
ENDOWMENT FUND****R2-2-101. Definitions**

In this Article, unless the context otherwise requires:

“Arizona Arts Endowment Fund” means the fund established
in A.R.S. § 41-986.

“Arts Organization” means an organization that has applied
for and received non-profit status under 501(c)(3) of the U.S.
internal revenue code and whose primary mission is to pro-
duce, present, or serve the arts.

“Commission” means the Arizona Commission on the Arts.

“Donor-advised Fund” means monies donated to a community
foundation, over which the donor or others designated by the
donor retain the right to advise on grants from the fund.

“Field-of-interest for the arts Fund” means monies donated to
a community foundation, that the donor restricts to grants in a
specific charitable field.

“Non-designated Funds” means monies donated or appropri-
ated to the Arizona Arts Endowment Fund, or to an endow-
ment fund for which income generated is to be administered
by the Commission for arts programs in Arizona.

“Other Government Endowment for the Arts” means an
endowment of a community college, university, city or county
local arts agency.

“Private Monies” means revenue from sources other than state
tax funds such as cash or securities, irrevocable deferred gifts,
lead trusts, real estate, or other items that are convertible to
cash. The cash value of an irrevocable deferred gift is its
present value.

“Programs” means arts activities or presentations that are pro-
moted to the public.

Historical note

Adopted effective September 21, 1998 (Supp. 98-3).
Amended by final rulemaking at 8 A.A.R. 3291, effective
July 15, 2002 (Supp. 02-3).

R2-2-102. Matching Private Monies

- A.** The Commission shall consider private monies to be a match
to the Arizona Arts Endowment Fund if the private monies are
contributed as follows:
1. The donor enters into a written agreement with an endow-
ment fund to dedicate the monies permanently; and
 2. The donor designates the monies to the Arizona Arts
Endowment Fund or to the endowment fund of a
501(c)(3) community organization contracting with the
Arizona Commission on the Arts to administer the mon-
ies.
- B.** The Commission shall not consider a donation to be a match to
the Arizona Arts Endowment Fund if:
1. The donor designates the monies to a specific arts organi-
zation’s endowment fund, or
 2. The donor designates the monies to another government
endowment fund for the arts.
- C.** The Commission shall consider monies in a donor-advised
fund or a field-of-interest for the arts fund the same as all other
monies donated in compliance with subsection (A).
- D.** Funds may be held, accounted for, and named individually.
- E.** The Commission may enter into written agreements with one
or more 501(c)(3) community organizations to collect, invest,
and manage private monies. The contracted organization shall
report, on a quarterly basis, the collection of, investment of,
and return on the monies, to the Commission.
- F.** The Commission shall request annual written financial reports
from non-profit arts organizations in Arizona. Each report
shall include a statement of the amount of monies received by
an endowment for the arts of the reporting non-profit arts orga-
nizations. The Commission shall annually document and
report these gifts to arts endowments to the Legislature in
addition to reporting non-designated funds.

Historical note

Adopted effective September 21, 1998 (Supp. 98-3).
Amended by final rulemaking at 8 A.A.R. 3291, effective
July 15, 2002 (Supp. 02-3).

**ARTICLE 2. GRANTMAKING PROCEDURES FOR
GRANTS FROM THE ARIZONA ARTS TRUST FUND****R2-2-201. Definitions**

In this Article, unless the context otherwise requires:

“Applicant” means an organization that applies for a grant.

“Application” means the documentation and material that an
applicant submits to request a grant.

“Arizona Arts Trust Fund” means the fund created by A.R.S. §
41-983.01 and funded with \$15 from each annual filing fee
submitted to the Arizona Corporation Commission by for-
profit corporations.

“Arizona Arts Trust Fund Grant” means a general operating
support grant that includes funds derived from the Arizona
Arts Trust Fund.

“Board member” means a trustee of a non-profit organization
elected or appointed according to that organization’s bylaws.

“Commission” means the Arizona Commission on the Arts, a state agency, consisting of fifteen members appointed by the Governor.

“Commissioner” means one of 15 Governor-appointed members of the Commission responsible for the administration of the Arizona Arts Program and the Arizona Arts Endowment Fund.

“Criteria” means the established and published standards used to evaluate an application to determine whether a grant award is recommended.

“Denial conference” means the method by which an applicant that was not recommended for a grant may request a review of their application.

“Fiscal agent” means any Arizona organization, designated 501(c)(3) tax exempt by the Internal Revenue Service, that accepts grant funds on behalf of an organization not meeting the nonprofit tax-exempt requirements.

“General operating support” means a grants program administered by the Commission that provides funds to organizations to be used for administrative or artistic expenses, or both.

“Grant” means an award of financial support to an organization, for the purposes requested in the application.

“Grant conditions” means specific requirements, agreed to by the grantee in writing, that must be met or undertaken to receive a grant.

“Grant deadline” means the published date by which an application must be postmarked or hand-delivered to the Commission to be considered for a grant.

“Grant review panel” means a group of citizens appointed by the Commission to review and make recommendations on public policy and applications for grants.

“Grant review panel chair” means a Commissioner who serves as a non-voting member of the panel to ensure that state law is followed and that there is an open, fair process for the review of applications by the grant review panel.

“Grant review panel comments” means documented comments made by the grant review panelists during the application review process that become the public record of the process after the final grants are awarded.

“Grant review panelist” means an individual serving on the grant review panel.

“Grantee” means an organization receiving grant funds.

“Guidelines” means information published annually describing the Commission’s grant program, including the application process, forms and formats, eligibility requirements, and criteria.

“Legal requirements” means the federal and state standards and regulations including those regarding fair labor, civil rights, accessibility, age discrimination, lobbying with appropriated monies, accounting records, and other published requirements to which organizations accepting a grant must adhere.

“Match” means an applicant’s financial contribution to a project, in addition to a grant, that demonstrates the community support of the project.

“Non-profit organization” means a school, governmental unit, or corporation that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

“Substantial interest” has the same meaning as in A.R.S. § 38-502.

“Underserved populations” means persons who are members of ethnic or racial minorities, have disabilities, or are from communities outside the metropolitan areas of Phoenix and Tucson.

Historical note

New Section made by final rulemaking at 8 A.A.R. 406, effective January 9, 2002 (Supp. 02-1).

R2-2-202. Eligibility

To be eligible to receive an Arizona Arts Trust Fund grant under this Article, an applicant shall meet the following requirements:

1. Be based in Arizona;
2. Be a city or county government, be designated as a non-profit 501(c)(3) organization by the Internal Revenue Service, or be an unincorporated organization using an Arizona-based nonprofit 501(c)(3) organization as a fiscal agent;
3. Submit no more than the maximum allowable number of grant applications per year as published in the Commission’s guidelines;
4. Match grant funds with applicant funds as required by the Commission; and
5. Have the production, presentation, or service of the arts as its primary mission.

Historical note

New Section made by final rulemaking at 8 A.A.R. 406, effective January 9, 2002 (Supp. 02-1).

R2-2-203. Criteria

A. The following criteria shall be used by the grant review panels and the Commission for reviewing general operating support grants and granting funds from the Arizona Arts Trust Fund:

1. Artistic quality and creativity;
2. Ability of the applicant organization’s programs to serve the needs of the community, including potential public exposure and public benefit, and efforts to reach artists and audiences from culturally diverse groups;
3. Managerial and administrative ability of the applicant organization to carry out arts programming and properly administer funds granted;
4. Appropriateness of the applicant organization’s budget to carry out its proposed programs; and
5. History of the applicant organization in producing, presenting or serving the arts.

B. Further, the Commission shall also take into consideration in approving grants:

1. Whether the applicant represents underserved populations;
2. The applicant’s employment of, or contracting with, artists who are members of racial or ethnic minorities; and
3. Inclusion of racial or ethnic minority members on applicant organizations’ governing boards.

Historical note

New Section made by final rulemaking at 8 A.A.R. 406, effective January 9, 2002 (Supp. 02-1).

R2-2-204. Process for Obtaining a Grant from the Arizona Arts Trust Fund

A. The Commission shall establish an annual grant deadline and publish grant guidelines by January 15th of each year. Applications shall be postmarked or delivered by 5:00 p.m. on the grant deadline date. Late applications shall not be filed by the Commission but shall be returned without review.

- B.** An applicant shall submit a narrative and budget that comply with the grant guidelines and address the criteria in R2-2-203. The Commission shall provide the forms and formats for the narrative and budget to the applicant. An applicant may submit supplemental information including slides, videotapes, audio recordings, press coverage, and print or other materials that document the artistic work of the applicant.
- C.** The Commission shall conduct a grant review process:
1. The Commission shall appoint grant review panels. Each panel shall be assigned a specific group of grant applications to review. The Commission shall appoint three to seven community members to serve on each of the grant review panels. Grant review panelists shall be appointed by the Commission for one year and may serve no more than three consecutive years on the same panel. No more than two members of any panel shall serve on the panel for the second and third years.
 2. Grant review panelists shall hold a grant review panel meeting. Grant review panelists shall read all the applications assigned to their panel prior to the grant review panel meeting. Upon request, grant review panelists shall attend events of the applicant or speak with a representative of the applicant to be informed about the applicant organization. At the grant review panel meeting, grant review panelists shall contribute to the discussion of the applications; rate applications based on the facts in the applications and their own professional judgments about the merit of the applications, in relation to the criteria in R2-2-203; and provide policy and procedural suggestions for the Commission.
 3. If a grant review panelist has a substantial interest in any application, the panelist shall declare the interest verbally and in writing and shall not participate in the discussion of or the vote on the application.
 4. The grant review panel chair shall chair the grant review panel meeting and shall ensure that the discussion relates to the required criteria, that Commission policies and open meeting laws under A.R.S. 38-431 et seq. are followed, and that all grant review panelists have an opportunity to speak.
- D.** Following the grant review panel process, Commissioners shall receive grant review panelists' recommendations and grant review panel comments for each application. At the Commission meeting following the Commissioners' receipt of grant review panelists' recommendations, the Commissioners shall discuss the recommendations of the grant review panels and shall vote to accept, reject, or modify the recommendations of the grant review panels.
- E.** All applicants shall be notified in writing of the Commission's decisions. Any applicant that is not recommended for funding may request and shall be provided a denial conference. The Commission shall establish and publish in its grant guidelines the process for requesting and receiving a denial conference. The Commission shall not provide a denial conference based on dissatisfaction with the amount of a grant.
- F.** All applicants shall accept in writing the grant's legal requirements and grant conditions before grant funds are released.

Historical note

New Section made by final rulemaking at 8 A.A.R. 406, effective January 9, 2002 (Supp. 02-1).

41-982. Powers and duties

A. The commission may:

1. With the consent of a majority of the commission, employ, subject to chapter 4, article 4 of this title, such personnel as may be required within the limits of funds available in the arts fund. The compensation for such personnel shall be as determined pursuant to section 38-611.
2. Hold hearings.
3. Enter into contracts, within the limits of funds available, with local and regional associations, individuals, organizations and institutions for any services which further the broad objectives of the commission's program.
4. Accept gifts, contributions and bequests of unrestricted funds for deposit in the arts fund or the arts trust fund from individuals, foundations, corporations, and other organizations or institutions for the purpose of furthering the broad objectives of the commission's program.
5. Make agreements to carry out the purposes of this article.
6. Request cooperation from any state agency for the purposes of this article.

B. The commission shall:

1. Stimulate and encourage throughout the state the study and presentation of the performing arts, fine arts, and public interest and participation therein.
2. Make such surveys of public and private institutions engaged within the state in artistic and cultural activities, as may be deemed advisable, and make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state.
3. Take such steps as may be necessary and appropriate to encourage public interest in the cultural heritage of our state and to expand the state's cultural resources.
4. Encourage and assist freedom of artistic and scholarly expression essential for the well-being of the arts.
5. Formulate policies and adopt rules and regulations which are consistent with the purposes of this article.

41-983.01. Arizona arts trust fund

A. There is established the Arizona arts trust fund. The trust fund shall be administered by the Arizona commission on the arts and shall consist of revenues derived from filing fees collected pursuant to section 10-122. The commission shall deposit, pursuant to sections 35-146 and 35-147, such revenues into the trust fund at least quarterly.

B. On notice from the commission, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the trust fund. Monies in the fund shall not revert to the state general fund.

C. Expenditures from the trust fund for grants under the Arizona arts program shall be authorized by a majority vote of the commission. All other expenditures may be authorized by the chairman of the commission. Expenditures shall be made upon warrants drawn by the department of administration.

41-983.02. Arizona arts program

A. There is established an Arizona arts program to be administered by the Arizona commission on the arts. The purpose of the program shall be to advance and to foster the arts in Arizona through grants from the Arizona arts trust fund.

B. The commission shall establish rules for the administration of the program including grant applications and criteria to be utilized when evaluating applications. Such criteria shall include but shall not be limited to artistic quality, creativity, potential public exposure and public benefit, and the ability of the recipient to properly administer funds granted. The commission shall further establish criteria to assure all of the following:

1. A portion of the funds is granted to organizations representing persons with disabilities.
2. A portion of the funds is granted to artists who are members of racial or ethnic minorities.
3. A portion of the funds is granted to organizations representing rural areas.
4. Recipient arts organizations include on their governing boards members of racial or ethnic minorities.

C. All grants shall be authorized by a majority vote of the members of the commission.

D. Each grant recipient shall submit a detailed report at least annually to the commission outlining the uses and expenditure of any funds granted from the Arizona arts trust fund. Recipients shall agree to any auditing requirements relating to the use of grant funds as set forth by the commission.

41-986. Arizona arts endowment fund

- A. The Arizona arts endowment fund is established consisting of monies appropriated annually to the fund.
- B. The Arizona commission on the arts shall administer the fund. On notice from the commission, the state treasurer shall invest and divest monies in the fund as provided by section 35-313. Monies earned from investment:
1. Shall be credited to the fund.
 2. Are a continuing appropriation to the commission.
- C. The commission may not spend any monies in the fund except monies earned from investment of fund monies.
- D. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.
- E. The commission may enter into contracts with private charitable, nonprofit organizations that qualify for tax exemption under section 501(c)(3) of the United States internal revenue code to administer monies that are donated by the organization for use in conjunction with monies from the Arizona arts endowment fund. The commission shall adopt rules regarding matching private monies with monies from the Arizona arts endowment fund in a manner consistent with the intent of the fund.
- F. The commission shall include in its annual report an accounting of the private monies that are donated for use in conjunction with the monies from the Arizona arts endowment fund.
- G. Notwithstanding any law to the contrary, no monies from the Arizona arts endowment fund may be spent for payment to any person or entity for use in desecrating, casting contempt on, mutilating, defacing, defiling, burning, trampling or otherwise dishonoring or causing to bring dishonor on religious objects, the flag of the United States or the flag of this state.

DEPARTMENT OF HEALTH SERVICES

Title 9, Chapter 8, Article 8



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 4, 2022

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

FROM: Council Staff

DATE: September 6, 2022

SUBJECT: Department of Health Services
Title 9, Chapter 8, Article 8

This Five-Year-Review Report (5YRR) from the Department of Health Services (Department) relates to rules in Title 9, Chapter 8, Article 8 regarding Public and Semipublic Swimming Pools and Bathing Places.

In the last 5YRR of these rules the Department proposed to complete a Notice of Final Rulemaking to the Council by 2019. The Department indicates they did not complete their proposed course of actions due to the fact that the proposed rulemaking would have been subsequent to the Department of Environmental Quality (DEQ) amending and/or expiring their rules in 18 A.A.C. 5, Article 2. DEQ did not amend the rules, therefore the Department did not complete their proposed changes.

Proposed Action

The Department is proposing to amend one of its rules to make it more clear, concise, understandable, and consistent with other rules and statutes. The Department indicates it plans to submit a Notice of Final Expedited Rulemaking to the Council by February 2023.

Additionally, the Department indicates, based on DEQ's recent 5YRR approved by the Council in 2021, DEQ may propose to expire some of their swimming pool rules and submit a rulemaking to the Council by June 2024. Given that the Department's rules reference DEQ's

rules in multiple sections, the Department relies on the enforcement of DEQ's rules. To address any issues caused by DEQ's future rulemaking, the Department indicates it anticipates submitting a Notice of Final Rulemaking to the Council after DEQ's rule changes go into effect.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Department cites both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Article regulates public and semipublic swimming pools and bathing places. The Department identifies stakeholders as the Department, counties, public users, businesses that own and operate public and semipublic swimming pools and bathing places, and manufacturers and distributors of disinfection products and equipment for public and semipublic swimming pools and bathing places. The Department states that in FY2021, there were 13,529 public and semipublic swimming pools and spas in Arizona. The Department also indicates that county departments conducted 21,394 routine swimming pools and bathing place inspections, performed 393 complaint inspections, and initiated 1,332 enforcement actions. The Department has completed a review and believes the economic impact is as originally stated in the 2002 EIS.

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 review indicates that the Department and local health departments continue to use the rules without increased cost or burden. For this reason, the Department has determined that the rules currently provide the least burden and cost to the Department and persons regulated by the rules, and achieve the regulatory objective consistent with statutory requirements.

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 comments to the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are overall clear, concise, and understandable with the exception of the following:

R9-8-801 - Definitions

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates the rules are overall consistent with other rules and statutes with the exception of the following:

R9-8-801 - Definitions

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.

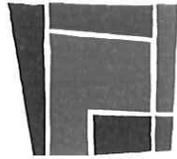
10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules were adopted before July 29, 2010 and do not require the issuance of a general permit.

11. **Conclusion**

As outlined above, the Department is currently proposing to amend one of its rules to make it more clear, concise, understandable, and consistent with other rules and statutes, and plans to submit a Notice of Final Expedited Rulemaking to the Council by February 2023.

Council staff recommends approval of this report.



ARIZONA DEPARTMENT
OF HEALTH SERVICES

June 29, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Report for 9 A.A.C. 8, Article 8, Public and Semipublic Swimming Pools

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 8, Public and Semipublic Swimming Pools and Bathing Places, which is due on July 31, 2022.

The Department reviewed the rules in 9 A.A.C. 8, Article 8 with the intention that the rules do not expire pursuant to A.R.S. § 41-1056(J).

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Lucinda Feeley at (602) 542-1574 or Lucinda.Feeley@azdhs.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Lane', written over a circular stamp or seal.

Robert Lane
Director's Designee

RL:tk

Enclosures

Douglas A. Ducey | Governor

Don Herrington | Interim Director



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 8. Public and Semipublic Swimming Pools and Bathing Places

July 2022

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-132(A)(1), 36-136(A)(4)-(7), 36-136(G), and 36-601.

Specific Statutory Authority: A.R.S. §§ 36-132(A)(12) and 36-136(I)(10).

2. The objective of each rule:

Rule	Objective
R9-8-801	To define terms and phrases used in the Article to enable the reader to clearly understand the requirements of the Article and allow for consistent interpretation.
R9-8-802	To clarify the scope of Article 8 by enumerating four specific examples to which Article 8 does not apply.
R9-8-803	To protect public health by setting forth the water quality and disinfection standards for public and semipublic swimming pools and spas, including specific water quality and disinfection standards, prohibited methods for disinfection, and quality standards relative to the surface water and bottom and sides of the swimming pool or spa.
R9-8-804	To protect public health by setting forth the water circulation requirements for public and semipublic swimming pools and spas, including reference to ADEQ rules that provide for the specific equipment necessary to ensure that circulation requirements are satisfied.
R9-8-805	To require that the maximum bathing load of a public and semipublic swimming pool or spa does not exceed calculated design capacity according to the Department of Environmental Quality rules, 18 A.A.C. 5, Article 2.
R9-8-806	To protect public health by requiring operators to post a sign notifying users of a public or semipublic swimming pool or spa to follow specific instructions before entering the water and to observe safety regulations.
R9-8-807	To protect public health by setting forth the sanitary facility requirements for a public or semipublic pool or spa, including the requirement that an operator of a public or semipublic swimming pool or spa to maintain a sanitary facility in a clean condition equipped with a soap dispenser and soap.
R9-8-808	To protect public health by setting forth the hygienic standard requirements for a public or semipublic pool or spa providing for bathing towels.
R9-8-809	To protect public health by requiring an operator to dispose of sewage, filter backwash, or swimming pool or spa water at a public or semipublic pool or spa in accordance with ADEQ rules.

R9-8-810	To protect public health by setting forth requirements regarding the cleanup of fecal matter in a public or semipublic pool or spa.
R9-8-811	To protect public health by requiring the operator of a public or semipublic natural bathing place, a semi-artificial bathing place, or an artificial lake to meet ADEQ's water quality standards when open for water contact recreation.
R9-8-812	To protect public health by permitting inspections by a regulatory authority to ensure compliance with this Article.
R9-8-813	To implement enforcement of this Article by providing a process by which enforcement is carried out that allows a regulatory authority to serve a written cease and desist and abatement order requiring an operator to discontinue any activity that the regulatory authority has reasonable belief is in violation of this Article.

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 __ No X

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
R9-8-801	Subsection (8) is inconsistent with the rule reference because the rule was re-codified to 9 A.A.C. 1, Article 6, Section R9-1-601 with an immediate effective date of December 7, 2020. Section R9-1-601 defines a "local health department" the same as A.R.S. § 36-671. Therefore, the cross-reference in this Article should be corrected to A.R.S. § 36-671.

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
R9-8-801	The rule is clear, concise, and understandable, but could be improved by removing an obsolete definition of the term, “surface water”, defined in subsection (31), which is not a term not used in the 9 A.A.C 8, Article 8 rules. Removing this definition would require renumbering the subsequent terms and definitions.

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:**

The economic impact statement (EIS) created as part of the 2002 rulemaking (2002 EIS) identified the following stakeholders: The Department, counties, public users, businesses that own and operate public and semipublic swimming pools and bathing places, and manufacturers and distributors of disinfection products and equipment for public and semipublic swimming pools and bathing places. In this economic, small business, and consumer impact comparison, annual cost/revenues are designated as “minimal” when less than \$1,000.00; “moderate” when between \$1,000.00 and \$10,000.00; “substantial” when \$10,000.00 or more; and “significant” when meaningful or important, but not readily subject to quantification.

The 2002 EIS reported that Maricopa County had 65 public swimming pools and that the total number of public swimming pools in the state was approximately 96. Since the rules in 9 A.A.C. 8, Article 8 were enacted, the number of annual inspections has increased due to an increase in the number of public and semipublic swimming pools and bathing places. In FY2021, there were 13,529 public and semi-public swimming pools and spas in Arizona. County departments conducted 21,394 routine swimming pool and bathing place inspections, performed 393 complaint inspections, and initiated 1,332 enforcement actions.

The 2002 EIS estimated that the Department would incur a minimal-to-moderate cost for staff time needed to write, review, and process the rules, as well as some administrative costs as a regulatory authority because the Department is responsible to supervise, inspect, and enforce the rules concerning public and semipublic swimming pools and bathing places. Because the Department delegates authority to the county health departments, the Department does not incur costs for inspections and enforcement.

The 2002 EIS estimated that the counties to whom the Department has delegated authority to inspect public and semipublic swimming pools and bathing places would incur minimal-to-moderate costs for staff to amend ordinances, train staff on new rules, and perform inspections. A.R.S. § 36-602 provides counties statutory authority to recapture costs for abatement and to charge a civil penalty for each nuisance. Thus, the counties are able to offset the costs incurred due to the rules. Because of this, the Department believes that the counties continue to incur minimal-to-moderate costs as originally predicted by the 2002 EIS.

The 2002 EIS estimated that the users of public and semipublic swimming pools and bathing places will realize the greatest benefits due to better sanitary conditions and decreased exposure to waterborne illness.

The Department’s Office of Infectious Disease Services collects data regarding waterborne illness. However, owners and operators of public and semipublic swimming pools and bathing places are not statutorily required to report. The CDC reports¹ that with correct pH and disinfectant levels, chlorine or bromine kills germs causing swimming-related illnesses—such as skin, ear, respiratory, eye, and other infections. Additionally, the CDC states, “[t]he best way to prevent swimming-related illnesses from spreading is to keep germs out of the water in the first place.” Because the rules in 9 A.A.C. 8, Article 8 address both matters identified by the CDC, the Department believes the 2002 EIS estimate that public users realize a significant benefit is still an accurate prediction; although, the degree to which the benefit is meaningful and important is not readily quantifiable.

The 2002 EIS stated that the rules in 9 A.A.C. 8, Article 8 incorporate current national sanitation standards that had already been adopted by most owners and operators of public or semipublic swimming pools or bathing places and concluded that any additional cost caused by the rules to owners and operators would be minimal. Also, the 2002 EIS stated the rules give owners and operators more choices in the products they use to maintain their public and semipublic swimming pools and spas. The Department does not collect data about owners’ and operators’ compliance with the national sanitation standards or owners’ and operators’ choice of products used to maintain their public and semipublic swimming pools and bathing places. Nor has the Department received feedback from stakeholders regarding these matters. Therefore, the Department believes that the economic impact is as originally stated in the 2002 EIS.

The 2002 EIS estimated that manufacturers and distributors of equipment and supplies for public and semipublic swimming pools and bathing places would incur a minimal-to-moderate benefit due to increased sales of disinfection products and equipment to owners and operators of public and semipublic swimming pools and bathing places. The Department does not collect data about disinfection products and equipment used to operate public and semipublic swimming pools and bathing places; nor has the Department received feedback from stakeholders regarding this matter. The Department believes that it is reasonable to assume that manufactures and distributors would have experienced increased benefit consistent with owners and operators who had already adopted the national sanitation standards prior to the rule’s promulgation as previously mentioned. For this reason, the Department believes that the economic impact is as originally stated in the 2002 EIS.

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?**

¹ <http://www.cdc.gov/healthywater/swimming/rwi/rwi-why.html>

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

In the 2017 Five-Year-Review Report, approved by the Council, the Department had proposed to submit a Notice of Final Rulemaking to the Governor's Regulatory Review Council by June, 2019. The Department did not complete this proposed course of action due to the fact that the proposed rulemaking would have been subsequent to the Arizona Department of Environmental Quality (ADEQ) amending and/or expiring their rules in 18 A.A.C. 5, Article 2. If ADEQ were to have amended their rules and/or allow their rules to expire, the Department would have initiated a rulemaking to address any issues and effects to the 9 A.A.C. 8, Article 8 rules caused by the ADEQ rulemaking. The rules in 9 A.A.C. 8, Article 8 liberally reference ADEQ's rules in 18 A.A.C. 5, Article 2, relating to public and semipublic swimming pools and bathing places. Additionally, if ADEQ were to allow rules regarding the public health and safety to expire, the Department would have pursued to adopt rules to ensure the public health and safety of public swimming pools. In 2017, ADEQ had begun the process of amending its rules in 18 A.A.C. 5, Article 2 and had planned to reference 2016 CDC Model Aquatic Code for many of the standards currently referenced in the Department's rules. However, ADEQ's 2017 rulemaking was not finalized, and since 2017, ADEQ has not made any amendments nor rule changes. Therefore, no changes have been necessary to make in 9 A.A.C. 8, Article 8 and no substantive issues affecting public health and safety have arose.

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 and local health departments continue to use the rules without increased cost or burden. For this reason, the Department has determined that the rules currently provide the least burden and cost to the Department and persons regulated by the rules, and achieve the regulatory objective consistent with statutory requirements.

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 more stringent than 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 were adopted before July 29, 2010 and do not require 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.

According to ADEQ's five-year review report, which was approved by the Council in November 2021, ADEQ is currently researching the level of review that county and city departments inspect public and semipublic swimming pools. Based on what ADEQ's findings may be in their research, ADEQ may propose to expire some swimming pool rules and submit the request to the Council by June 2023. In addition, ADEQ proposed to the council to amend their rules by June 2024. Since the rules in 9 A.A.C. 8, Article 8 reference ADEQ rules in multiple Sections and the Department relies on the enforcement of ADEQ rules, amendments to the 18 A.A.C. 5, Article 2 rules may cause issues, specially to public health and safety. To address any issues caused by the ADEQ rulemaking, Department anticipates submitting a Notice of Final Rulemaking to the Governor's Regulatory Review Council subsequent ADEQ rule changes going into effect.

Although the items described in sections four and six of this five-year review report, are minor, not substantive, and do not inhibit those regulated by the rules from understanding and complying with the rules, a change as described will provide the correct citation, give clarity to readers, and therefore improve the effectiveness of the rules. The Department plans to make changes to the rules to address these items and to submit a Notice of Final Expedited Rulemaking to the Council by February 2023. This course of action is subject to change based on the Governor's rulemaking moratorium and the Department's priorities.

TITLE 9. HEALTH SERVICES

**CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL
SANITATION**

ARTICLE 8. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND BATHING PLACES

Section	
R9-8-801.	Definitions
R9-8-802.	Applicability
R9-8-803.	Public and Semipublic Swimming Pool and Spa Water Quality and Disinfection Standards
R9-8-804.	Public and Semipublic Swimming Pool and Spa Water Circulation Requirements
R9-8-805.	Public and Semipublic Swimming Pool and Spa Maximum Bathing Loads
R9-8-806.	Posting Requirements
R9-8-807.	Public and Semipublic Swimming Pool and Spa and Bathing Place Facility Sanitation
R9-8-808.	Bathing Place Towels
R9-8-809.	Disposal of Sewage, Filter Backwash, and Wasted Swimming Pool or Spa Water
R9-8-810.	Fecal Contamination in Public and Semipublic Swimming Pools and Spas
R9-8-811.	Natural and Semi-artificial Bathing Place and Artificial Lake Water Quality Standards
R9-8-812.	Inspections
R9-8-813.	Cease and Desist and Abatement
R9-8-814.	Repealed
R9-8-815.	Repealed
R9-8-816.	Repealed
R9-8-817.	Repealed
R9-8-818.	Reserved
R9-8-819.	Reserved
R9-8-820.	Reserved
R9-8-821.	Repealed
R9-8-822.	Repealed
R9-8-823.	Repealed
R9-8-824.	Repealed
R9-8-825.	Reserved
R9-8-826.	Reserved
R9-8-827.	Reserved
R9-8-828.	Reserved
R9-8-829.	Reserved
R9-8-830.	Reserved
R9-8-831.	Repealed
R9-8-832.	Repealed
R9-8-833.	Repealed
R9-8-834.	Repealed
R9-8-835.	Repealed
R9-8-836.	Repealed
R9-8-837.	Repealed
R9-8-838.	Repealed
R9-8-839.	Repealed
R9-8-840.	Reserved
R9-8-841.	Repealed
Exhibit A.	Repealed
R9-8-842.	Repealed
R9-8-843.	Repealed
R9-8-844.	Repealed
R9-8-845.	Repealed
R9-8-846.	Repealed
R9-8-847.	Repealed
R9-8-848.	Reserved
R9-8-849.	Reserved
R9-8-850.	Reserved
R9-8-851.	Repealed
R9-8-852.	Repealed

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

ARTICLE 8. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND BATHING PLACES

R9-8-801. Definitions

In this Article, unless otherwise specified:

1. "Artificial lake" has the same meaning as in A.A.C. R18-5-201.
2. "Backwash" has the same meaning as in A.A.C. R18-5-201.
3. "Bathing place" means a volume of water that is used for water contact recreation.
4. "Clean" means free from slime, scum, dirt, or other debris.
5. "Deck" has the same meaning as in A.A.C. R18-5-201.
6. "Department" means the Arizona Department of Health Services.
7. "Incontinent" means unable to restrain a bowel movement.
8. "Local health department" has the same meaning as in R9-18-101.
9. "Maximum bathing load" has the same meaning as in A.A.C. R18-5-201.
10. "Natural bathing place" has the same meaning as in A.A.C. R18-5-201.
11. "Operate" has the same meaning as in A.A.C. R18-5-201.
12. "Operator" means an individual who owns, runs, maintains, or otherwise controls or directs the functioning of a bathing place.
13. "Oxidation-reduction potential" means the measurement in millivolts of the potential for transfer of electrons from one atom or molecule to another in water.
14. "Potable water" has the same meaning as in A.A.C. R18-5-201.
15. "Ppm" means parts per million.
16. "Private residential spa" has the same meaning as in A.A.C. R18-5-201.
17. "Private residential swimming pool" has the same meaning as in A.A.C. R18-5-201.
18. "Public health services district" has the same meaning as "district" in A.R.S. § 48-5801.
19. "Public spa" has the same meaning as in A.A.C. R18-5-201.
20. "Public swimming pool" has the same meaning as in A.A.C. R18-5-201.
21. "Regulatory authority" means the Department or a local health department or public health services district operating under a delegation of authority from the Department.
22. "Sanitary facility" means a designated area that includes a toilet, urinal, sink, or shower.
23. "Scum" means a film that forms on the surface of water.
24. "Semi-artificial bathing place" means a lake, pond, river, stream, swimming hole, or hot spring that is modified to be used for water contact recreation.
25. "Semipublic spa" has the same meaning as in A.A.C. R18-5-201.
26. "Semipublic swimming pool" has the same meaning as in A.A.C. R18-5-201.
27. "Shallow area" has the same meaning as in A.A.C. R18-5-201.
28. "Shock treatment" means adding chlorine to water to elevate the free chlorine residual to 20 ppm and destroy ammonia and nitrogenous and organic contaminants in the water.
29. "Slime" means a glutinous or viscous liquid matter.
30. "Spa" has the same meaning as in A.A.C. R18-5-201.
31. "Surface water" has the same meaning as in A.A.C. R18-11-101.
32. "Swimming pool" has the same meaning as in A.A.C. R18-5-201.
33. "Turnover rate" has the same meaning as in A.A.C. R18-5-201.
34. "Wading pool" has the same meaning as in A.A.C. R18-5-201.
35. "Water circulation system" has the same meaning as in A.A.C. R18-5-201.
36. "Water circulation system components" has the same meaning as in A.A.C. R18-5-201.
37. "Water fountain" means a bathing place that functions by using mechanical means to propel a stream of water out of an opening or structure.
38. "Water contact recreation" means an activity for enjoyment in which an individual wets all or part of the individual's body with water.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

R9-8-802. Applicability

This Article does not apply to:

1. A private residential swimming pool,
2. A private residential spa,
3. A bathing place used for medical treatment or physical therapy supervised by licensed medical personnel, or
4. A body of water that is not used as a bathing place.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

R9-8-803. Public and Semipublic Swimming Pool and Spa Water Quality and Disinfection Standards

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

- A.** An operator of a public or semipublic swimming pool or spa shall ensure that:
1. The swimming pool or spa is filled only with potable water;
 2. The water in the swimming pool or spa:
 - a. Complies with the water quality standards in this Section when the swimming pool or spa is open for water contact recreation;
 - b. Maintains a pH of between 7.2 and 7.8;
 - c. Maintains a total alkalinity of between 60 and 100 ppm; and
 - d. Is sufficiently clear so that the main drain in the swimming pool or spa is visible from the deck of the swimming pool or spa;
 3. The surface of the water in the swimming pool or spa is free from scum and floating debris;
 4. The bottom and sides of the swimming pool or spa are free from sediment, dirt, slime, and algae;
 5. The chemical disinfection level, pH, total alkalinity, and temperature of the water is tested at least once daily; and
 6. A daily operating log that includes the results of the tests in subsection (A)(5) is maintained for 12 months from the date of the test and is available to a regulatory authority or a member of the public upon request.
- B.** An operator of a public or semipublic swimming pool or spa:
1. Shall not use chloramine as a primary disinfectant in the swimming pool or spa;
 2. Shall not add gaseous disinfectant directly into the swimming pool;
 3. Shall not add dry or liquid disinfectant directly into the swimming pool or spa for routine disinfection; and
 4. May add dry or liquid disinfectant directly into the swimming pool or spa for shock treatment.
- C.** An operator of a public or semipublic swimming pool or spa using chlorinated isocyanurates or cyanuric acid stabilizer for disinfection and stabilization in the swimming pool or spa shall ensure that the water in the swimming pool or spa maintains an oxidation-reduction potential equal to or greater than 650 millivolts and that cyanuric acid levels, whether from chlorinated isocyanurates or from the separate addition of cyanuric acid stabilizer, do not exceed 150 ppm.
- D.** An operator of a public or semipublic swimming pool shall ensure that the water in the swimming pool meets one of the following chemical disinfection standards:
1. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test,
 2. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test, or
 3. An oxidation-reduction potential equal to or greater than 650 millivolts.
- E.** An operator of a public or semipublic spa shall ensure that:
1. A chlorine gas disinfection system is not used in the spa;
 2. The water temperature in the spa does not exceed 40EC; and
 3. The water in the spa meets one of the following chemical disinfection standards:
 - a. A free chlorine residual between 3.0 and 5.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test,
 - b. A free bromine residual between 3.0 and 5.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test, or
 - c. An oxidation-reduction potential equal to or greater than 650 millivolts.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

R9-8-804. Public and Semipublic Swimming Pool and Spa Water Circulation Requirements

- A.** An operator of a public or semipublic swimming pool or spa shall ensure that:
1. The swimming pool or spa water circulation system complies with the water circulation requirements in 18 A.A.C. 5, Article 2; and
 2. The swimming pool or spa is equipped with:
 - a. A flow meter as specified in 18 A.A.C. 5, Article 2; and
 - b. A vacuum cleaning system as specified in 18 A.A.C. 5, Article 2.
- B.** An operator may draw water from a swimming pool for a water slide or a water fountain without filtering or disinfecting the water.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

R9-8-805. Public and Semipublic Swimming Pool and Spa Maximum Bathing Loads

An operator of a public or semipublic swimming pool or spa shall ensure that the maximum bathing load, as specified in 18 A.A.C. 5, Article 2, is not exceeded.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

R9-8-806. Posting Requirements

An operator of a public or semipublic swimming pool or spa shall ensure that a sign is posted within 50 feet of the swimming pool or spa, that includes the following instructions:

1. Use the toilet before entering the pool or spa;
2. Take a shower before entering the pool or spa;
3. Do not enter the pool with a cold, skin or other body infection, open wound, diarrhea, or any other contagious condition;

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4. If incontinent, wear tight fitting rubber or plastic pants or a swim diaper; and
5. Observe all safety regulations.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

R9-8-807. Public and Semipublic Swimming Pool and Spa and Bathing Place Facility Sanitation

- A. An operator of a public or semipublic swimming pool or spa shall ensure that a sanitary facility at the public or semipublic swimming pool is maintained in a clean condition.
- B. An operator of a public or semipublic swimming pool or bathing place shall provide a soap dispenser with liquid or powdered soap at each sink in a sanitary facility.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

R9-8-808. Bathing Place Towels

If a towel is provided by a bathing place to an individual using the bathing place, an operator of the bathing place shall ensure that the towel is washed with soap or detergent and hot water and thoroughly dried after each individual use.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

R9-8-809. Disposal of Sewage, Filter Backwash, and Wasted Swimming Pool or Spa Water

An operator of a public or semipublic swimming pool or spa shall ensure that sewage, filter backwash, and swimming pool or spa water are disposed of according to A.A.C. R18-5-236.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

R9-8-810. Fecal Contamination in Public and Semipublic Swimming Pools and Spas

- A. If solid feces are found in a public or semipublic swimming pool or spa, an operator of the swimming pool or spa shall ensure that:
 1. Each individual in the swimming pool or spa exits the swimming pool or spa and the swimming pool or spa is closed,
 2. The feces in the swimming pool or spa are removed and disposed of in a toilet,
 3. The chemical disinfection level of the water in the swimming pool or spa is tested to determine whether the water complies with the water quality and disinfection standards in R9-8-803, and
 4. The swimming pool or spa is not reopened until a test conducted under subsection (A)(3) indicates that the water complies with the water quality and disinfection standards in R9-8-803.
- B. If liquid feces are found in a public or semipublic swimming pool or spa, an operator of the swimming pool or spa shall ensure that:
 1. Each individual in the swimming pool or spa exits the swimming pool or spa and the swimming pool or spa is closed;
 2. The swimming pool or spa is closed for at least 24 hours;
 3. As much of the liquid feces as possible in the swimming pool or spa is removed and disposed of in a toilet;
 4. The swimming pool or spa is chemically treated with a shock treatment;
 5. The water in the swimming pool or spa is tested 24 hours after applying the shock treatment to determine whether the water complies with the water quality and disinfection standards in R9-8-803; and
 6. The swimming pool or spa is not reopened until a test conducted under subsection (B)(5) indicates that the water complies with the water quality and disinfection standards in R9-8-803.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

R9-8-811. Natural and Semi-artificial Bathing Place and Artificial Lake Water Quality Standards

An operator of a public or semipublic natural bathing place, a semi-artificial bathing place, or an artificial lake shall ensure that the public or semipublic natural bathing place, semi-artificial bathing place, or artificial lake meets the narrative and numeric water quality standards in 18 A.A.C. 11, Article 1 when the public or semipublic natural bathing place, semi-artificial bathing place, or artificial lake is open for water contact recreation.

Historical Note

Section repealed; new Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

R9-8-812. Inspections

- A. A regulatory authority shall inspect a bathing place to determine whether the bathing place complies with this Article.
- B. A regulatory authority shall inspect a public swimming pool at least once each month that the swimming pool is open for water contact recreation.

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Historical Note

Section repealed; new Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

R9-8-813. Cease and Desist and Abatement

- A.** Engaging in any practice in violation of this Article is a public nuisance.
- B.** If a regulatory authority has reasonable cause to believe that an operator of a public or semipublic swimming pool or bathing place is creating or maintaining a public nuisance at the public or semipublic swimming pool or bathing place, the regulatory authority shall order the operator to discontinue the activity and to abate the public nuisance as follows:
1. The regulatory authority shall serve on the operator a written cease and desist and abatement order requiring the operator to discontinue the activity and to remove the public nuisance at the operator's expense within 24 hours after service of the order. The order shall contain:
 - a. A reference to the statute or rule that is alleged to have been violated or on which the order is based,
 - b. A description of the operator's right to request a hearing, and
 - c. A description of the operator's right to request an informal settlement conference.
 2. The regulatory authority shall serve the order and any subsequent notices by personal delivery or certified mail, return receipt requested, to the operator or other party's last address of record with the regulatory authority or by any other method reasonably calculated to effect actual notice to the operator or other party.
 3. The operator or another party whose rights are determined by the order may obtain a hearing to appeal the order by filing a written notice of appeal with the regulatory authority within 30 days after service of the order. The operator or other party appealing the order shall serve the notice of appeal upon the regulatory authority by personal delivery or certified mail, return receipt requested, to the office of the regulatory authority or by any other method reasonably calculated to effect actual notice on the regulatory authority. Appealing an order does not release the operator from the obligation to comply with the order.
 4. If a notice of appeal is timely filed, the regulatory authority shall do one of the following:
 - a. If the regulatory authority is the Department or a local health department or public health services district to which the duty to comply with A.R.S. Title 41, Chapter 6, Article 10 is delegated, the notification and hearing shall comply with A.R.S. Title 41, Chapter 6, Article 10 and any rules promulgated by the Office of Administrative Hearings.
 - b. For all other regulatory authorities, the notification and hearing shall comply with the procedures adopted by a county board of supervisors as required by A.R.S. § 36-183.04(E).
 5. If a written notice of appeal is not timely filed, the order becomes final.
 6. A regulatory authority shall inspect the public or semipublic swimming pool or bathing place 24 hours after service of the order to determine whether the operator has complied with the order. If the regulatory authority determines upon inspection that the operator has not ceased the activity and abated the public nuisance, the regulatory authority shall cause the public nuisance to be removed.

Historical Note

Section repealed; new Section made by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

R9-8-814. Repealed**Historical Note**

Section repealed by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

R9-8-815. Repealed**Historical Note**

Section repealed by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

R9-8-816. Repealed**Historical Note**

Section repealed by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

R9-8-817. Repealed**Historical Note**

Section repealed by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

R9-8-818. Reserved**R9-8-819. Reserved****R9-8-820. Reserved****R9-8-821. Repealed**

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Historical note

R9-8-821 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

R9-8-822. Repealed**Historical note**

R9-8-822 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

R9-8-823. Repealed**Historical Note**

Section repealed by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

R9-8-824. Repealed**Historical Note**

Section repealed by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

R9-8-825. Reserved**R9-8-826. Reserved****R9-8-827. Reserved****R9-8-828. Reserved****R9-8-829. Reserved****R9-8-830. Reserved****R9-8-831. Repealed****Historical Note**

R9-8-831 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

R9-8-832. Repealed**Historical Note**

R9-8-832 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

R9-8-833. Repealed**Historical Note**

R9-8-833 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

R9-8-834. Repealed**Historical Note**

R9-8-834 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

R9-8-835. Repealed**Historical Note**

R9-8-835 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

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R9-8-836. Repealed**Historical Note**

R9-8-836 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

R9-8-837. Repealed**Historical Note**

R9-8-837 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

R9-8-838. Repealed**Historical Note**

Section repealed by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

R9-8-839. Repealed**Historical Note**

R9-8-839 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

R9-8-840. Reserved**R9-8-841. Repealed****Historical Note**

R9-8-841 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

Exhibit A. Repealed**Historical Note**

Exhibit A repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

R9-8-842. Repealed**Historical Note**

R9-8-842 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

R9-8-843. Repealed**Historical Note**

R9-8-843 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

R9-8-844. Repealed**Historical Note**

R9-8-844 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

R9-8-845. Repealed**Historical Note**

R9-8-845 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June

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8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

R9-8-846. Repealed**Historical Note**

R9-8-846 repealed by summary action with an interim effective date of July 6, 1998; filed in the Office of the Secretary of State June 8, 1998 (Supp. 98-2). Adopted summary rules filed October 9, 1998; interim effective date of July 6, 1998, now the permanent effective date (Supp. 98-4).

R9-8-847. Repealed**Historical Note**

Section repealed by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

R9-8-848. Reserved**R9-8-849. Reserved****R9-8-850. Reserved****R9-8-851. Repealed****Historical Note**

Editorial correction, spelling of “political” (Supp. 89-2). Section repealed by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

R9-8-852. Repealed**Historical Note**

Section repealed by final rulemaking at 8 A.A.R. 3645, effective August 9, 2002 (Supp. 02-3).

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

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

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the

accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, 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.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

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

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. If 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 not 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.

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 fundraising 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 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.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

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 preserving or storing 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 preparing 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 36-183.02. 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.

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. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. 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 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.

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 25, Articles 9-11



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 4, 2022

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

FROM: Council Staff

DATE: September 7, 2022

SUBJECT: Department of Health Services
Title 9, Chapter 25, Articles 9-11

This Five-Year Review Report (5YRR) from the Department of Health Services (Department) relates to rules in Title 9, Chapter 25 regarding Emergency Medical Services. The report covers the following Articles:

- Article 9 :** Ground Ambulance Certificate of Necessity
- Article 10 :** Ground Ambulance Vehicle Registration
- Article 11 :** Ground Ambulance Service General Public Rates and Charges;
Contracts

In the last 5YRR of these rules the Department proposed to amend the rules and complete a rulemaking that addressed the changes mentioned in the report as well as make other changes suggested by stakeholders. Given the level of stakeholder engagement anticipated for the rulemaking, the Department believed the rulemaking could take over three years to complete. Additionally, the Department indicated they could not begin the rulemaking process until after the rulemaking for air ambulance services, regulated under 9 A.A.C. 25, Articles 7 and 8, was close to completion. Therefore, the Department planned to submit a Notice of Rulemaking to the Council by December 31, 2022. The Department indicates the rulemaking is currently underway.

Proposed Action

The Department, for the specific reasons mentioned in the report, is proposing to amend several of the rules to improve their overall clarity, conciseness, understandability, effectiveness, and consistency with other rules and statutes. The Department indicates the rulemaking process is well underway, but due to extensive stakeholder involvement in the process and several Legislative changes initiated by stakeholders this year, they plan to submit a Notice of Final Rulemaking to the Council by December 2023.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes, the Department cites both general and specific statutory authority.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department believes the costs and benefits identified in the economic, small business, and consumer impact statement (EIS) for the 2001 rulemaking are generally consistent with the actual costs and benefits of the rules, but do not include estimates for the costs incurred by stakeholders to participate in the rulemaking process. At the time of the rulemaking, the Department states, these costs may have been moderate.

An exempt rulemaking in 2013 that revised rules in Article 9 is reported to have caused at most minimal additional costs and provided a significant benefit to all stakeholders. In the same exempt rulemaking, revised rules in Article 10 may have caused minimal-to-substantial costs per ground ambulance vehicle for ground ambulance services that did not already comply with the new requirements. The general public is believed to have received a significant benefit from increased patient safety. One rule, which had previously been revised in the 2013 rulemaking, was further revised in an expedited rulemaking in 2018. The Department believes this expedited rulemaking provided a significant benefit to all stakeholders by increasing the clarity of the rules.

Stakeholders are identified as the Department, ground ambulance services (private and municipal), and the general public.

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 believes that the rules under review are necessary to ensure the health and safety of patients treated or transported by ground ambulance services and the public health of individuals in Arizona who may require these services. Thus, the probable benefits of the rules outweigh the probable costs. However, the benefit to all persons would be increased through the revision of the rules. The Department also believes that the rules do not impose the least burden and costs to regulated persons and is working with them to identify and revise rules that require changes.

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 comments to the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are overall clear, concise, and understandable with the exception of the following:

R9-25-901 - Definitions

R9-25-902 - Application for an Initial Certificate of Necessity; Provision of ALS Services; Transfer of a Certificate of Necessity

R9-25-903 - Determining Public Necessity

R9-25-904 - Application for Renewal of a Certificate of Necessity

R9-25-906 - Determining Response Times, Response Codes, and Response-Time

R9-25-907 - Observance of Service Area; Exceptions

R9-25-908 - Transport Requirements; Exceptions

R9-25-909 - Certificate of Insurance or Self-Insurance

R9-25-910 - Records and Reporting Requirements

R9-25-911 - Ground Ambulance Service Advertising

R9-25-912 - Disciplinary Action

Exhibit 9A - Ambulance Revenue and Cost Report, General Information and Certification

Exhibit 9B - Ambulance Revenue and Cost Report, Fire District and Small Rural Company

R9-25-1001 - Initial and Renewal Application for a Certificate of Registration

R9-25-1002 - Minimum Standards for Ground Ambulance Vehicles

R9-25-1003 - Minimum Equipment and Supplies for Ground Ambulance Vehicles

R9-25-1005 - Ground Ambulance Vehicle Inspection; Major and Minor Defects

R9-25-1006 - Ground Ambulance Vehicle Identification

R9-25-1101 - Application for Establishment of Initial General Permit Public Rates

R9-25-1102 - Application for Adjustment of General Public Rates

R9-25-1103 - Application for a Contract Rate or Range of Rates Less than General Public Rates

R9-25-1104 - Ground Ambulance Service Contracts

R9-25-1105 - Application for Provision of Subscription Service or to Establish a Subscription Service Rate

R9-25-1106 - Rate of Return Setting Considerations

R9-25-1108 - Implementation of Rate and Charges

R9-25-1109 - Charges

R9-25-1110 - Invoices

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates the rules are overall consistent with other rules and statutes with the exception of the following:

- R9-25-902 - Application for an Initial Certificate of Necessity; Provision of ALS Services; Transfer of a Certificate of Necessity
- R9-25-908 - Transport Requirements; Exceptions
- R9-25-912 - Disciplinary Action
- R9-25-1005 - Ground Ambulance Vehicle Inspection; Major and Minor Defects
- R9-25-907 - Observance of Service Area; Exceptions
- R9-25-908 - Transport Requirements; Exceptions
- R9-25-909 - Certificate of Insurance or Self-Insurance
- R9-25-910 - Records and Reporting Requirements
- R9-25-1001 - Initial and Renewal Application for a Certificate of Registration
- R9-25-1002 - Application for Adjustment of General Public Rates
- R9-25-1005 - Ground Ambulance Vehicle Inspection; Major and Minor Defects
- R9-25-1006 - Rate of Return Setting Considerations
- R9-25-1101 - Application for Establishment of Initial General Permit Public Rates
- R9-25-1102 - Application for Adjustment of General Public Rates
- R9-25-1103 - Application for a Contract Rate or Range of Rates Less than General Public Rates
- R9-25-1104 - Ground Ambulance Service Contracts
- R9-25-1105 - Application for Provision of Subscription Service or to Establish a Subscription Service Rate
- R9-25-1106 - Rate of Return Setting Considerations
- R9-25-1107 - Rate Calculation Factors
- R9-25-1108 - Implementation of Rates and Charges
- R9-25-1110 - Invoices

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are overall effective in achieving their objectives with the exception of the following:

- R9-25-901 - Definitions
- R9-25-902 - Application for an Initial Certificate of Necessity; Provision of ALS Services; Transfer of a Certificate of Necessity
- R9-25-903 - Determining Public Necessity
- R9-25-904 - Application for Renewal of a Certificate of Necessity
- R9-25-905 - Application for Amendment of a Certificate of Necessity

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.

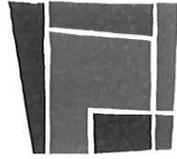
10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The rules do not require the issuance of a general permit.

11. Conclusion

As mentioned above, and for the specific reasons mentioned in the report, the Department indicates it is currently in the process of amending their rules. The Department anticipates to complete the rulemaking process, and submit a Notice of Final Rulemaking to the Council by December 2023.

Council staff recommends approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

June 29, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 25, Articles 9, 10, and 11, Five-Year-Review Report for
Emergency Medical Services

Dear Ms. Sornsin:

Please find enclosed the Five-Year Review Report (Report) from the Arizona Department of Health Services (Department) for 9 A.A.C. 25, Articles 9, 10, and 11, which is due on June 30, 2022.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,

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

Robert Lane
Director's Designee

RL:rms

Enclosures



Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 25. Department of Health Services

Emergency Medical Services

Article 9. Ground Ambulance Certificate of Necessity

Article 10. Ground Ambulance Vehicle Registration

Article 11. Ground Ambulance Service General Public Rates and Charges; Contracts

June 2022

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-136(A)(7), 36-136(G), 36-2202(A)

Specific Statutory Authority: A.R.S. §§ 36-2202(A)(5), 36-2204, 36-2212, 36-2232, 36-2233, 36-2235, 36-2236, 36-2237, 36-2239, 36-2240, and 36-2241

2. The objective of each rule:

Rule	Objective
R9-25-901	To define terms used in Articles 9, 10, and 11 to assist the reader in understanding the requirements of the Articles and allow for consistent interpretation.
R9-25-902	To establish application requirements and the process for: <ol style="list-style-type: none"> a. Applying for an initial certificate of necessity, b. Applying to provide ALS, and c. Requesting a transfer of a certificate of necessity.
R9-25-903	To establish the factors that the Director must consider when determining whether public necessity requires the issuance of an initial or amended certificate of necessity to an applicant.
R9-25-904	To establish: <ol style="list-style-type: none"> a. Requirements for applying for renewal of a certificate of necessity, and b. Consequences related to failure to file for renewal before the expiration of a certificate of necessity.
R9-25-905	To establish the requirements and process for applying for an amendment of a certificate of necessity.
R9-25-906	To establish the factors that the Director may consider in determining response times, response codes, and response-time tolerances.
R9-25-907	To establish the general prohibition on a certificate holder's providing EMS or transport in an area outside of the area covered by the certificate holder's certificate of necessity, with two listed exceptions.
R9-25-908	To require a certificate holder to transport a patient unless at least one of the specified circumstances exists.
R9-25-909	To establish the minimum standards for the insurance coverage or evidence of financial responsibility required under A.R.S. § 36-2237(A).
R9-25-910	To require a certificate holder to:

	<ul style="list-style-type: none"> a. Submit financial data annually, and b. Maintain and give the Department access to specified records.
R9-25-911	<p>To prevent a certificate holder from:</p> <ul style="list-style-type: none"> a. Providing false or misleading advertising, or b. Circumventing the use by patients of the 9-1-1 or similarly designated emergency telephone number.
R9-25-912	<p>To establish the:</p> <ul style="list-style-type: none"> a. Disciplinary actions that may be taken against the holder of a certificate of necessity, b. Circumstances under which disciplinary actions may be taken, and c. Criteria that the Department must consider when determining what action to take under A.R.S. § 36-2245.
Exhibit 9A	To establish the financial data that must be filed with the Department as part of every application for an initial certificate of necessity and on an annual basis by a certificate holder that is not a fire district or small rural company.
Exhibit 9B	To establish the financial data that must be filed with the Department as part of every application for an initial certificate of necessity and on an annual basis by a certificate holder that is a fire district or small rural company.
R9-25-1001	<p>To establish the:</p> <ul style="list-style-type: none"> a. Requirements for applying for an initial or renewal certificate of registration for a ground ambulance vehicle, b. Inspection requirements related to obtaining an initial or renewal certificate of registration, and c. Process for obtaining a certificate of registration for a ground ambulance vehicle.
R9-25-1002	To establish minimum physical, mechanical, and equipment standards for a ground ambulance vehicle.
R9-25-1003	To establish minimum requirements for medical equipment, medical supplies, and communications equipment for a ground ambulance vehicle.
R9-25-1004	To establish minimum staffing requirements for a ground ambulance vehicle.
R9-25-1005	<p>To establish requirements related to the inspection of ground ambulance vehicles.</p> <p>To classify defects as major or minor.</p> <p>To specify what a certificate holder is required to do when an inspection reveals a major defect or minor defect on a ground ambulance vehicle.</p>
R9-25-1006	To establish requirements related to identification marks on the exterior of ground ambulance vehicles and corresponding staffing.
R9-25-1101	To establish the requirements for applying for initial general public rates.
R9-25-1102	To establish the requirements for applying for an adjustment of a general public rate.
R9-25-1103	To establish the requirements for applying for a contract rate or range of rates less than the general public rate.
R9-25-1104	To establish the requirements for applying for approval of a ground ambulance service contract.
R9-25-1105	<p>To establish the requirements for applying to:</p> <ul style="list-style-type: none"> a. Provide subscription service, b. Establish a subscription service rate, or c. Obtain approval of a subscription service contract.
R9-25-1106	To establish:

	<p>a. The factors the Department will consider when determining the rate of return on gross revenue,</p> <p>b. How the Director will determine just, reasonable, and sufficient rates, and</p> <p>c. How the rate of return is calculated by the Department</p>
R9-25-1107	<p>To establish the factors the Department will consider when evaluating a proposed mileage rate, BLS rate, and ALS rate.</p> <p>To require the Department to adjust rates to maximize Medicare reimbursement.</p> <p>To establish how the standby waiting rate is calculated by the Department.</p>
R9-25-1108	To establish the requirements for assessing rates and charges, and refunding a rate or charge.
R9-25-1109	To require a certificate holder to submit a list of disposable supplies, medical supplies, medications, and oxygen-related costs for which a ground ambulance service charges a patient, the proposed charges, and the effective date of the proposed charges before implementing the charge and whenever a charge is changed.
R9-25-1110	To establish requirements related to invoices submitted to patients for services rendered.

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
R9-25-901	The rule is effective in achieving its objective but could be improved by defining “change in ownership” to account for publicly traded corporations in which the sale or transfer of stock may not influence the controlling persons of the corporation and so the definition is not as subjective as in subsection (9)(c). The definition of “gross revenue” could be amended since it provides an example of how the figure denoted by the term is calculated rather than a definition of what the term means. The rule would also be more effective if a definition of “accounting period” were added.
R9-25-902	The rule is effective but could be more effective if the rule required, as part of an application packet for an initial certificate of necessity, information about any other name by which the entity “ground ambulance service” is known; the provision of more information about the need for a ground ambulance service in the proposed service area; submission of an applicant’s organizational documents, such as articles of incorporation; submission of the information and documents for establishing initial public rates, specified in R9-25-1101, rather than a “statement of the proposed general public rates”; submission of the list of items that a certificate holder proposes to charge patients, specified in R9-25-1109, rather than a “statement of the proposed charges”; and documentation to comply with A.R.S. § 41-1080.
R9-25-904	The rule is effective in achieving its objective but could be improved by restructuring subsections (B) and (C) to make clear that the Department is not issuing an approval to commence operations but is considering an application for an initial application. The rule could also be more effective if the required insurance coverage included not only the automobile liability insurance and professional liability insurance required for the ground ambulance service under A.R.S. § 36-2237(A) and R9-25-902(A)(3)(h), but also the professional liability insurance for ALS personnel, for a ground ambulance service providing ALS, as required for an initial application in R9-25-902(B)(2). The rule could also be more effective if the renewal application required the statement specified in R9-25-902(A)(1)(o) and the date of the applicant’s signature.
R9-25-905	The rule is mostly effective in achieving its objective but could be more effective by amending subsections (A) and (B) to better tailor the documentation submitted by a certificate holder in support of the request to amend a certificate of necessity to the type of change being requested.

R9-25-907	The rule is not effective in achieving its objective because subsection (1) of the rule is confusing and the rule does not capture other conditions where a certificate holder should or may be ethically bound to provide EMS outside the certificate holder's service area. The Department has issued two substantive policy statements in the past few years to specify the Department's interpretation of the rule.
R9-25-908	The rule is not effective in achieving its objective because the rule combines conditions under which a certificate holder shall not transport a patient with conditions under which a certificate holder may, but is not required to, transport a patient. For example, the rule appears to prevent a certificate holder from contracting to provide an interfacility transport of a patient from a hospital in Phoenix to another hospital in Tucson, which may provide the same level of care but is closer to the patient's family, or to transport a patient who does not qualify for Medicare Part B reimbursement but who can otherwise pay for the transport.
R9-25-909	The rule is effective in achieving its objective but could be improved by making a distinction between professional liability insurance for the ground ambulance service and the professional liability insurance for ALS personnel that is required of ground ambulance services providing ALS but that is not required for personnel of a ground ambulance service only providing BLS.
R9-25-910	The rule is effective in achieving its objectives but could be improved by citing to A.R.S. § 36-2241 or specifying the length of time, consistent with the statute, a certificate holder is required to maintain records. The rule could also be improved if the rule specified under what circumstances Exhibit 9A or Exhibit 9B is the "appropriate" Ambulance Revenue and Cost Report to be used. The rule would also be more effective if it required the submission to the Department of certain information to enable the Department to assess the quality of components of the statewide emergency medical services and trauma system, consistent with A.R.S. § 36-2204(10).
R9-25-912	The rule is mostly effective in achieving its objectives but does not provide a regulated person with notice of the immediate suspension allowed under A.R.S. §§ 36-2234(L) and 41-1092.11(B). Nor does the rule address the "other disciplinary action" that may be taken.
R9-25-1001	The rule is effective in achieving its objectives but could be improved by specifying eligibility criteria; requiring other names by which the applicant does business, the title of the individual signing the application, and the date the application was signed; and including the fees as part of the application packet, rather than in a separate subsection.
R9-25-1002	The rule is effective in achieving its objective but could be more effective if subsection (8) included requirements in A.R.S. § 28-955 and subsection (22) clarified who may supply an inspection tag or allowed for a disposable fire extinguisher.
R9-25-1005	The rule is effective in achieving its objectives but could be improved if subsection (H) also required documentation of the repair being completed.
R9-25-1006	The rule is effective in achieving its objective but the components of the rule could be more effective if the requirement in subsection (A) were included in R9-25-1002, and the requirements in subsection (B) were included in R9-25-1003 and R9-25-1004.
R9-25-1101	The rule is mostly effective in achieving its objective but could be improved by specifying in subsection (A)(3) what period of time an Ambulance Revenue and Cost Report needs to cover, requiring in subsection (A)(4) a projected Ambulance Revenue and Cost Report, and requiring in subsection (A)(9) the date the attestation was signed. The rule could also be more effective if subsection (A)(3) specified under what circumstances financial statements should be submitted and under what circumstances an Ambulance Revenue and Cost Report should be submitted, rather than giving an applicant a choice of submitting either.
R9-25-1102	The rule is effective in achieving its objective. but could be more effective if a certificate holder were required to include in the application the certificate of necessity number assigned by the Department to the certificate holder's certificate of necessity and the date the attestation was signed. The rule could also be more effective if subsection (B)(7) specified what period of

	time an Ambulance Revenue and Cost Report needed to cover, and subsection (B)(8) required a projected Ambulance Revenue and Cost Report rather than projected income statement and cash-flow statement. In addition, the rule could be more effective if the requirement in subsection (B)(14) for the submission of “any other information or documents requested by the Director to clarify or complete the application” were replaced with a requirement for stating whether supplementary requests for information can be made by the Department during a substantive review, since these documents are unknown to an applicant at the time of the application and could be requested during the substantive review period specified in Article 12. The rule could also be more effective if subsection (C) included a reference to R9-25-1106 and R9-25-1107, which include criteria to be used by the Department in deciding whether or not to approve an adjustment of a general public rate.
R9-25-1103	The rule is mostly effective in achieving its objective but could be more effective if a certificate holder were required to include in the application the certificate of necessity number assigned by the Department to the certificate holder’s certificate of necessity. In addition, the rule could be more effective if subsection (B) included a reference to R9-25-1106 and R9-25-1107, which include criteria to be used by the Department in deciding whether or not to approve an application for a contract rate or range of rates less than the general public rate.
R9-25-1104	The rule is mostly effective in achieving its objective but could be more effective if a certificate holder were required to include in the cover letter the certificate of necessity number assigned by the Department to the certificate holder’s certificate of necessity and the name of the other party to the contract. The rule could also be more effective if subsection (B) included a reference to R9-25-1106, R9-25-1107, and, if applicable, A.R.S. § 36-2234(K), which include criteria to be used by the Department in deciding whether or not to approve a ground ambulance service contract and review requirements. The rule could also be more effective if the rule specified that a contract may not be implemented until approved by the Department.
R9-25-1105	The rule is effective in achieving its objectives but could be more effective if there were separate subsections to specify the requirements for the three objectives of the rule or if the objectives of the rule were amended. Subsection (A)(1) requires the submission of some information that is useful in determining a subscription service rate, but the rule does not require the name of the certificate holder or number assigned by the Department to the certificate of necessity.
R9-25-1106	The rule is effective in achieving its objectives but could be more effective if the factors listed in subsection (A) were linked to the information required in the Ambulance Revenue and Cost Report in Exhibits 9A and 9B. The rule could also be more effective if subsection (C) provided a cap on the rate of return.
R9-25-1107	The rule is effective in achieving its objectives but could be more effective if subsection (C) provided for the costs of additional professional insurance for ALS personnel, required in R9-25-902(B)(2), and if the method of determining the standing waiting rate in subsection (E) were assessed to determine if it was still appropriate.
R9-25-1108	The rule is effective in achieving its objectives but could be more effective if the rule specified that under A.R.S. § 36-2239(D) a rate or charge is not effective and cannot be charged until approved by the Department. The rule could also be more effective if subsection (A)(2) allowed a ground ambulance service to calculate mileage using software designed for that purpose.
R9-25-1110	The rule is effective in achieving its objective but could be more effective if subsections (C) and (D) were combined since they both address combined rates and charges.

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
R9-25-902	The rule is inconsistent with A.R.S. § 41-1080 because it contains no requirement related to determining the lawful presence in the country of an applicant’s representative. Subsection (A)(1)(c) of the rule is inconsistent with R9-25-201 and R9-25-202, which do not require that administrative medical direction and on-line medical direction be provided through affiliation with an ALS base hospital or centralized medical communications center.
R9-25-908	The rule is not consistent with A.R.S. § 36-2205(E) and R9-25-504(B), which provide for patient choice.
R9-25-912	The rule is not consistent with A.R.S. §§ 36-2234(L) and 41-1092.11(B), which allow for the immediate suspension of a certificate of necessity, without notice and a hearing, in case of emergency when there is a potential threat to the public health and safety.
R9-25-1005	Because of changes made to R9-25-1002 in the 2013 rulemaking, some cross-references to that rule are incorrect. For example, the cross-reference to R9-25-1002(6) should be to subsection (7), the cross-reference to R9-25-1002(36) should be to subsection (38), and the cross-reference to R9-25-1002(39) should be to subsection (41).
Multiple	Except as described above, the rules are consistent with statutes. However, several bills (SB 1210, HB 2374, HB 2407, HB 2431, and HB 2609) been passed this Legislative session that may/will affect the rules included in this report. When the revised statutes go into effect, some of the current rules may be inconsistent with these revised statutes.

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
R9-25-902	The rule is enforced consistent with A.R.S. § 41-1080.

6. **Are the rules clear, concise, and understandable?** Yes No X

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
R9-25-901	The rule is mostly clear, concise, and understandable, but could be improved by clarifying the term “ground ambulance service” because the term is used in the definitions of “ground ambulance service contract,” “indirect costs,” “needs assessment,” and “type of ground ambulance service” and in other rules throughout the Article to mean the actual service provided, which is inconsistent with the definition of “ground ambulance service” in the rule, as meaning a person. In the definition of “level of service,” the term appears to be used both ways. The definition of “minor defect” could be clearer because the condition of being without any problem could be included. In the definition of “suburban area,” the question of whether the population density description is for the “urban area” or the “geographic region” could be clearer. The conciseness of the definition of “substandard performance” could be improved because not meeting the requirements in Article 10 in subsection (46)(c) would be included in noncompliance with 9 A.A.C. 25 in subsection (46)(a). The definitions of “Ambulance Revenue

	and Cost Report” and “gross revenue” should also be corrected to refer to Exhibits 9A and 9B. The rule would also be more concise if terms used only once in the rules, like “goodwill” or “indirect costs,” were defined/described in place rather than defined in this rule.
R9-25-902	The rule is clear, concise, and understandable, but could be improved by clarifying subsection (A)(1)(c) to use the term “ALS base hospital,” which is the term defined in R9-25-101, and subsection (A)(1)(m) to use the term “level of service,” which is the term defined in R9-25-901. The rule could be made clearer by using the term “ground ambulance service” in a manner consistent with the definition in R9-25-901. The clarity of the rule could also be improved if wording similar to that used in R9-25-1101(A)(5) or R9-25-1102(B)(9) replaced the phrase “financing agreement for all capital acquisitions exceeding \$5,000” in subsection (A)(3)(c). The rule could also be improved by clarifying in subsection (C)(1) that the “person wanting to transfer the certificate of necessity” refers to the current certificate holder and by defining or describing the terms “dispatch center,” “business representative,” and “designated manager.” The rule would also be clearer if it specified that, once an application is approved, an application packet for a certificate of registration for each ground ambulance vehicle to be operated by the ground ambulance service under the certificate of necessity must be submitted and at least one ambulance vehicle registered before the certificate of necessity could be issued. The rule would also be improved by separating requirements for an application for an initial certificate of necessity from requirements for a planned transfer of a certificate of necessity.
R9-25-903	The rule is clear, concise, and understandable, but could be improved by using the term “ground ambulance service” in a manner consistent with the definition in R9-25-901. The rule could also be clearer if the term “population demographics” were defined or described.
R9-25-904	The rule is clear, concise, and understandable, but could be improved by clarifying the meaning of the term “timely” in subsections (B) and (C) and correcting minor grammatical errors.
R9-25-906	The rule is clear, concise, and understandable but could be improved by clarifying the meaning of the term “medical direction authority” in subsection (4).
R9-25-907	The rule is not clear, concise, and understandable because the term “service area’s dispatch” is undefined. Without this term being defined, it is unclear who may authorize EMS or transport in an area other than the service area identified in the certificate holder’s certificate of necessity and may lead to a conflict with the statutory intent in establishing certificates of necessity.
R9-25-908	The rule is not clear as to whether the rule refers only to transport related to EMS or to any type of transport. The rule also uses the undefined term “medical direction authority” in subsection (3).
R9-25-909	The rule is clear, concise, and understandable, but could be more concise by removing or amending subsection (B), which duplicates requirements in R9-25-902(A)(3)(h) and R9-25-904(A)(2).
R9-25-910	The rule is clear, concise, and understandable but could be improved if subsection (B)(6) were amended to specify the maintenance of prehospital incident history reports, required under Article 2, since the documents specified and Sections cited in subsection (B)(6) no longer exist.
R9-25-911	The rule is clear, concise, and understandable but could be improved by using the defined terms “type of ground ambulance service” and “level of service” rather than “type or level of ground ambulance service.”
R9-25-912	The rule is mostly clear, concise, and understandable but could be improved by removing passive language and correcting the grammar in subsection (A). The rule could also be clearer if the term “disciplinary action” were replaced with the term “enforcement action,” which is used in R9-25-211, R9-25-317, R9-25-411, R9-25-709, and R9-25-806 in the same context.
Exhibit 9A	The rule is clear, concise, and understandable but could be improved if terms, such as “LIFO,” “FIFO,” “loaded billable miles,” “subsidized patients,” “non-subsidized patients,” “subscription service direct selling,” and “allocation percentage,” were defined. However, since these terms

	have been used and understood by the regulated community for over 10 years, their meaning is well-understood, and their use without definition is not problematic.
Exhibit 9B	The rule is clear, concise, and understandable but could be improved if terms, such as “small rural company,” “loaded billable miles,” and “IEMT,” were defined. However, since these terms have been used and understood by the regulated community for over 10 years, their meaning is well-understood, and their use without definition is not problematic.
R9-25-1001	The rule is clear, concise, and understandable but could be improved if grammatical errors were corrected and subsection (A)(4) specified that, for a renewal, the identification number of the certificate of necessity is required.
R9-25-1002	The rule is clear, concise, and understandable but could be improved if the word “system” were added to the phrase “power-steering that is” in subsection (14)(b) and if subsection (36) were removed as duplicating the requirement in R9-25-1003(A)(31)(f).
R9-25-1003	The rule is mostly clear, concise, and understandable but could be improved if the duplication of the requirements in subsection (A)(37)(f) and R9-25-1002(36) were addressed. The terms “crew” in subsection (C) and “medical direction authority” in subsections (D)(2) and (D)(3) could also be clarified. Unless the phrase “in the driver’s compartment” were added in subsection (D)(2), it is unclear how subsections (D)(2) and (D)(3) differ. The rule could also be more understandable if subsection (A)(37)(c) were amended to more clearly specify the weight-carrying capacity of a stretcher.
R9-25-1005	The rule is clear, concise, and understandable but could be improved if subsection (G) were amended to remove passive language.
R9-25-1006	The rule is clear, concise, and understandable but could be improved by using the defined term “level of service” rather than “level of ground ambulance service,” replacing the numeral “6” with the word “six,” and removing passive language.
R9-25-1101	The rule is clear, concise, and understandable, but could be improved by specifying which Ambulance Revenue and Cost Report must be submitted, clarifying whether the list specified in subsection (A)(5) is the same list as required in R9-25-902(A)(3)(c), and correcting several minor grammatical errors.
R9-25-1102	The rule is mostly clear, concise, and understandable, but could be improved by correcting several minor grammatical errors and removing subsection (B)(6) from the rule since the elements of a financial statement are included in the Ambulance Revenue and Cost Report, required in subsection (B)(7). Subsection (B)(7) could be clearer if it specified that the Ambulance Revenue and Cost Report should cover a 24-month period, in compliance with A.R.S. § 36-2234(F).
R9-25-1103	The rule is mostly clear, concise, and understandable, but could be improved by making it clearer that submitting an application does not guarantee that an applicant will obtain the requested contract rate or range of rates.
R9-25-1104	The rule is mostly clear, concise, and understandable but could be clearer if the rule specified whether a ground ambulance service contract may only be used for interfacility transports or convalescent transports, as implied by R9-25-1103, or whether EMS may also be provided under a service contract, and, if so, requirements for service contracts with health care institutions or other companies for interfacility transports or convalescent transports were separated from requirements for service contracts with political subdivisions for the provision of EMS services. The rule could also be clearer as to whether a proposed contract or a signed and executed contract must be submitted for approval. This lack of clarity resulted in the Department’s issuance of a guidance document related to political subdivision contracts for ambulance service. The rule could also be improved if subsection (A) were restructured to conform to current rulemaking format and style requirements.

R9-25-1105	The rule is clear, concise, and understandable, but subsection (A)(2) could be clearer by specifying that the proposed subscription service contract is a template to be used with a multitude of subscribers.
R9-25-1106	The rule is clear, concise, and understandable, but could be improved if terms used in the rule, such as “balance sheet,” “income statement,” “cash flow statement,” “variable and fixed costs,” “method of indirect cost allocation,” “reimbursable and non-reimbursable charges,” and “accrual method” were defined or described. However, since these terms have been used and understood by the regulated community for over 10 years, their meaning is well-understood, and their use without definition is not problematic. The references in subsection (D) should also be corrected to refer to Exhibits 9A and 9B.
R9-25-1107	The rule is clear, concise, and understandable but could be improved if the factors listed in subsection (A) were linked to the information required in the Ambulance Revenue and Cost Report in Exhibits 9A and 9B.
R9-25-1108	The rule is mostly clear, concise, and understandable, but could be improved by replacing the pronoun “its” in subsection (D) with the noun to which the pronoun refers.
R9-25-1109	The rule is clear, concise, and understandable, but could be improved by clarifying that the Department does not approve the charges for disposable supplies, medical supplies, medications, and oxygen-related costs. The rule could also be improved if the rule were restructured to enhance clarity.
R9-25-1110	The rule is clear, concise, and understandable, but could be improved by restructuring the rule to remove passive language.

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:**

The rules in Articles 9, 10, and 11 were adopted by final rulemaking, effective February 13, 2001, to establish rules related to initial and renewal certificates of necessity, ground ambulance registration, and ground ambulance service rates, contracts, subscription service, other charges, and invoicing. At the time of the 2001 rulemaking, there were 83 ground ambulance services operating in Arizona. Of these, 20 were private, for-profit businesses; 11 were private, non-profit businesses; and 52 were owned or operated by political subdivisions. As of June 1, 2022, there were 96 ground ambulance services operating in Arizona. Of these, 21 are private, for-profit businesses; five are private, non-profit businesses; 20 are municipal ground ambulance services; 46 are fire districts established under A.R.S. Title 48, Chapter 5; one is operated under tribal authority; two are operated by a hospital; and one is operated by a county.

An economic, small business, and consumer impact statement (EIS) was submitted to the Governor’s Regulatory Review Council (Council) as part of the Notice of Final Rulemaking package for the 2001 rulemaking. The EIS stated that “[t]he rulemaking incorporates existing requirements and practices already established in rule, current practices of the Department that are already in place, and new requirements and changes that reflect

current industry practices. ... Some provisions within the proposed rules result in additional costs being imposed on the providers. Other provisions lead to cost savings that directly benefit the providers. The overall economic impact of the rulemaking is expected to be minimal, with the benefits of the rule outweighing the costs. The retention of requirements and practices already in rule should have little or no direct impact. The impact of any requirements or practices that have been in place and are now incorporated in rule will be mitigated to the extent that those affected have already incorporated these requirements and practices into their general operations. New requirements and changes in existing requirements designed to improve public safety and regulatory efficiency should also have a minimal to moderate economic impact.” The rulemaking was expected to affect the 83 then-regulated ground ambulance services. On page 16 of the EIS, annual cost/revenues were designated as “minimal” when less than \$1,000.00; “moderate” when between \$1,000.00 and \$10,000.00; and “substantial” when \$10,000.00 or more.

The EIS for the 2001 rulemaking stated that the Department would incur minimal costs for the additional time to evaluate an application for a certificate of necessity, provision of ALS services, or transfer of a certificate of necessity; to determine public necessity; and to provide guidelines for determining response times, response codes, response time tolerances, and rate of return on gross revenue. The EIS also stated that the Department would incur minimal-to-moderate costs to take disciplinary action against a certificate holder. The Department was believed to receive a minimal benefit from the new application rules and from providing guidelines for determining response times, response codes, response time tolerances, and rate of return on gross revenue; minimal-to-moderate benefit from taking disciplinary action against a certificate holder; and moderate benefit from a reduction in staff time for receiving, filing, and storing provider records.

The Department anticipated that political subdivisions and private businesses would incur minimal costs for the additional time to submit an application for an initial, renewal, or amended certificate of necessity or for provision of ALS services; minimal-to-moderate costs related to insurance coverage; moderate costs to comply with minimal standards for ground ambulance vehicles; and moderate-to-substantial costs related to minimal standards for medical equipment on ground ambulance vehicles. The EIS also stated that the Department believed that political subdivisions and private businesses would receive a minimal benefit from having consolidated application rules; minimal-to-moderate benefit from eliminating a requirement to submit monthly dispatch logs and other records to the Department; moderate benefit from having disciplinary action guidelines and exceptions to transport requirements; and moderate-to-substantial benefit from eliminating requirements to carry some medical supplies and from allowing the assessment of rates for multiple-patient transport and standby waiting times. Private businesses were also expected to receive a moderate-to-substantial benefit from receiving a minimum 7% rate of return from general public rates.

The Department believes the costs and benefits identified in this EIS are generally consistent with the actual costs and benefits of the rules, but do not include estimates for the costs incurred by stakeholders to participate in the rulemaking process. At the time of the rulemaking, these costs may have been moderate.

As part of an exempt rulemaking in 2013 to comply with Laws 2012, Ch. 94, the rules in R9-25-901, R9-25-902, Exhibits 9A and 9B, R9-25-1002, and R9-25-1004 were last revised. Although this rulemaking resulted in modest changes to Articles 9 and 10, and none to Article 11, a large group of stakeholders participated in the 2013 rulemaking, lengthening the process and incurring costs for both the Department and the stakeholders. In Article 9, the Department removed unnecessary definitions from R9-25-901; clarified that the application in R9-25-902 was to be submitted in a Department-provided format, added requirements for an e-mail address and for the signature to be dated, and corrected a cross-reference; and in the Exhibits, renamed the Exhibits to include the Article number, corrected the Department's address, and corrected the terminology for EMCTs. The Department believes the changes in Article 9 caused at most minimal additional costs and provided a significant benefit to all stakeholders. In R9-25-1002, minimum standards for ground ambulance vehicles were updated to require that interior patient compartment wall and floor coverings were in good repair, capable of being disinfected, and maintained in a sanitary manner and that there be at least two means of egress from the patient compartment. A cross-reference was corrected in R9-25-1004. The Department believes that most, if not all, ground ambulance services already complied with the new requirements in R9-25-1002 to protect the health and safety of both the patients served by the ground ambulance service and the EMCTs working for the ground ambulance service. For a ground ambulance service that did not, the Department estimates that the ground ambulance service could have incurred a minimal-to-substantial cost per ground ambulance vehicle to comply with these requirements. The Department estimates that a ground ambulance service could have incurred a minimal-to-substantial cost per ground ambulance vehicle to comply with updated equipment requirements. A patient being transported by the ground ambulance service and the patient's family and health insurance carrier, and the general public are believed to receive a significant benefit from increased patient safety.

One rule, which had previously been revised as part of the 2013 rulemaking, R9-25-1003, was further revised in an expedited rulemaking in 2018 to correct a cross-reference to a Table in Article 5 of the Chapter that was removed from the rules. The Department believes this change provided a significant benefit to all stakeholders by increasing the clarity of the rules.

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.

In the 2017 five-year-review-report, the Department stated that the Department intended to revise the rules in Articles 9, 10, and 11 to address concerns described in the report and make other changes suggested by stakeholders during a rulemaking. Because of the level of stakeholder engagement anticipated during the rulemaking, the Department believed that a rulemaking could take over three years to complete and could not begin until after the rulemaking for air ambulance services, regulated under 9 A.A.C. 25, Articles 7 and 8, was

close to completion since the same staff would be involved in both rulemakings and many of the same stakeholders would participate. Therefore, the Department planned to submit a Notice of Final Rulemaking to the Council by December 31, 2022. This rulemaking is currently underway. The Department received an exception from the rulemaking moratorium in September 2019 and planned to conduct the rulemaking in stages: first completing a draft for Article 10, then revising Article 9, followed by Article 11, and finishing with the Ambulance Revenue and Cost Reports (Exhibits 9A and 9B). All semifinal drafts would then be put together into a single final draft for stakeholder review to ensure internal consistency. Since then, the Department has completed the semifinal draft for Article 10, posting three drafts and holding two meetings with stakeholders about these rules. The Department has been in the process of revising the rules in Article 9, with extensive stakeholder input, since the summer of 2020, posting five drafts and holding 10 meetings with stakeholders. The Department believes that a semifinal draft for Article 9 was close to being completed, prior to the passage of HB 2609 and other bills during the current Legislative session. The draft rules in Article 9 will need to be reviewed for consistency with new statutory requirements and will then be reviewed with stakeholders to address any concerns. The Department has begun reviewing the rules in Article 11 and determining what stakeholders want to volunteer to provide their expertise in reviewing and revising drafts of Article 11. Once that is done, the Department plans to include the information currently in Exhibits 9A and 9B into text to allow for electronic input and submission. Thus, the Department is well underway in the rulemaking process but has not yet completed the rulemaking. A history of the rulemaking may be reviewed at:
<https://azdhs.gov/director/administrative-counsel-rules/rules/index.php#rulemakings-active-ground-ambulance>.

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 in Article 9 establish the requirements for ground ambulance certificates of necessity to protect public health and safety and ensure emergency medical transport is available in all areas of the State. Article 10 establishes the requirements for ground ambulance vehicle registration to ensure that the ambulances used to transport a patient are safe to operate, carry the minimum equipment and supplies, and are staffed appropriately. Article 11 establishes the requirements for ground ambulance service rates and charges and contracts to provide adequate compensation for ground ambulance services to ensure their fiscal ability to operate. The Department believes that these rules are necessary to ensure the health and safety of patients treated or transported by ground ambulance services and the public health of individuals in Arizona who may require these services. Thus, the probable benefits of the rules outweigh the probable costs. However, the benefit to all persons would be increased through the revision of the rules. The Department also believes that the rules do not impose the least burden and costs to regulated persons and is working with them to identify and revise rules that require changes.

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)?

Federal laws do not apply to the rules in 9 A.A.C. 25, Articles 9, 10, and 11.

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 require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-2212 and A.R.S. Title 36, Chapter 21.1, Article 2, so a general permit is not applicable.

14. **Proposed course of action**

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department is actively engaged in amending the rules in 9 A.A.C. 25, Articles 9, 10, and 11, in a process that is well underway. Due to extensive stakeholder involvement in the process and several Legislative changes initiated by stakeholders this year, the Department plans to continue the rulemaking as described under paragraph 10 and submit a Notice of Final Rulemaking to the Council by December 2023.

CURRENT RULES IN 9 A.A.C. 25, ARTICLES 9, 10, AND 11

ARTICLE 9. GROUND AMBULANCE CERTIFICATE OF NECESSITY

Section

- R9-25-901. Definitions (Authorized by A.R.S. § 36-2202 (A))
- R9-25-902. Application for an Initial Certificate of Necessity; Provision of ALS Services; Transfer of a Certificate of Necessity (Authorized by A.R.S. §§ 36-2204, 36-2232, 36-2233(B), 36-2236(A) and (B), 36-2240)
- R9-25-903. Determining Public Necessity (A.R.S. § 36-2233(B)(2))
- R9-25-904. Application for Renewal of a Certificate of Necessity (A.R.S. §§ 36-2233, 36-2235, 36-2240)
- R9-25-905. Application for Amendment of a Certificate of Necessity (A.R.S. §§ 36-2232(A)(4), 36-2240)
- R9-25-906. Determining Response Times, Response Codes, and Response-Time Tolerances for Certificates of Necessity and Provision of ALS Services (A.R.S. §§ 36-2232, 36-2233)
- R9-25-907. Observance of Service Area; Exceptions (A.R.S. § 36-2232)
- R9-25-908. Transport Requirements; Exceptions (A.R.S. §§ 36-2224, 36-2232)
- R9-25-909. Certificate of Insurance or Self-Insurance (A.R.S. §§ 36-2232, 36-2233, 36-2237)
- R9-25-910. Record and Reporting Requirements (A.R.S. §§ 36-2232, 36-2241, 36-2246)
- R9-25-911. Ground Ambulance Service Advertising (A.R.S. § 36-2232)
- R9-25-912. Disciplinary Action (A.R.S. §§ 36-2244, 36-2245)
- Exhibit 9A. Ambulance Revenue and Cost Report, General Information and Certification
- Exhibit 9B. Ambulance Revenue and Cost Report, Fire District and Small Rural Company

ARTICLE 10. GROUND AMBULANCE VEHICLE REGISTRATION

Section

- R9-25-1001. Initial and Renewal Application for a Certificate of Registration (A.R.S. §§ 36-2212, 36-2232, 36-2240)
- R9-25-1002. Minimum Standards for Ground Ambulance Vehicles (Authorized by A.R.S. § 36-2202(A)(5))
- R9-25-1003. Minimum Equipment and Supplies for Ground Ambulance Vehicles (Authorized by A.R.S. § 36-2202(A)(5))
- R9-25-1004. Minimum Staffing Requirements for Ground Ambulance Vehicles (Authorized by A.R.S. §§ 36-2201(4), 36-2202(A)(5))

R9-25-1005. Ground Ambulance Vehicle Inspection; Major and Minor Defects (A.R.S. §§ 36-2202(A)(5), 36-2212, 36-2232, 36-2234)

R9-25-1006. Ground Ambulance Vehicle Identification (A.R.S. §§ 36-2212, 36-2232)

ARTICLE 11. GROUND AMBULANCE SERVICE RATES AND CHARGES; CONTRACTS

Section

R9-25-1101. Application for Establishment of Initial General Public Rates (A.R.S. §§ 36-2232, 36-2239)

R9-25-1102. Application for Adjustment of General Public Rates (A.R.S. §§ 36-2234, 36-2239)

R9-25-1103. Application for a Contract Rate or Range of Rates Less than General Public Rates (A.R.S. §§ 36-2234(G) and (I), 36-2239)

R9-25-1104. Ground Ambulance Service Contracts (A.R.S. §§ 36-2232, 36-2234(K))

R9-25-1105. Application for Provision of Subscription Service or to Establish a Subscription Service Rate (A.R.S. § 36-2232(A)(1))

R9-25-1106. Rate of Return Setting Considerations (A.R.S. §§ 36-2232, 36-2239)

R9-25-1107. Rate Calculation Factors (A.R.S. § 36-2232)

R9-25-1108. Implementation of Rates and Charges (A.R.S. §§ 36-2232, 36-2239)

R9-25-1109. Charges (A.R.S. §§ 36-2232, 36-2239(D))

R9-25-1110. Invoices (A.R.S. §§ 36-2234, 36-2239)

ARTICLE 9. GROUND AMBULANCE CERTIFICATE OF NECESSITY

R9-25-901. Definitions (Authorized by A.R.S. § 36-2202 (A))

In addition to the definitions in A.R.S. § 36-2201 and R9-25-101, the following definitions apply in Articles 9, 10, 11, and 12 unless otherwise specified:

1. “Adjustment” means a modification, correction, or alteration to a rate or charge.
2. “ALS base rate” means the monetary amount assessed to a patient according to A.R.S. § 36-2239(F).
3. “Ambulance Revenue and Cost Report” means Exhibit A or Exhibit B, which records and reports the financial activities of an applicant or a certificate holder.
4. “Application packet” means the fee, documents, forms, and additional information the Department requires to be submitted by an applicant or on an applicant’s behalf.
5. “Back-up agreement” means a written arrangement between a certificate holder and a neighboring certificate holder for temporary coverage during limited times when the neighboring certificate holder’s ambulances are not available for service in its service area.
6. “BLS base rate” means the monetary amount assessed to a patient according to A.R.S. § 36-2239(G).
7. “Certificate holder” means a person to whom the Department issues a certificate of necessity.
8. “Certificate of registration” means an authorization issued by the Department to a certificate holder to operate a ground ambulance vehicle.
9. “Change of ownership” means:
 - a. In the case of ownership by a sole proprietor, 20% or more interest or a beneficial interest is sold or transferred;
 - b. In the case of ownership by a partnership or a private corporation, 20% or more of the stock, interest, or beneficial interest is sold or transferred; or
 - c. The controlling influence changes to the extent that the management and control of the ground ambulance service is significantly altered.
10. “Charge” means the monetary amount assessed to a patient for disposable supplies, medical supplies, medication, and oxygen-related costs.
11. “Chassis” means the part of a ground ambulance vehicle consisting of all base components, including front and rear suspension, exhaust system, brakes, engine, engine hood or cover, transmission, front and rear axles, front fenders, drive train and shaft, fuel system, engine air intake and filter, accelerator pedal, steering wheel, tires, heating and cooling system, battery, and operating controls and instruments.
12. “Convalescent transport” means a scheduled transport other than an interfacility transport.
13. “Dispatch” means the direction to a ground ambulance service or vehicle to respond to a call for EMS or transport.
14. “Driver’s compartment” means the part of a ground ambulance vehicle that contains the controls and instruments for operation of the ground ambulance vehicle.
15. “Financial statements” means an applicant’s balance sheet, annual income statement, and annual cash flow statement.
16. “Frame” means the structural foundation on which a ground ambulance vehicle chassis is constructed.
17. “General public rate” means the monetary amount assessed to a patient by a ground ambulance service for ALS, BLS, mileage, standby waiting, or according to a subscription service contract.
18. “Generally accepted accounting principles” means the conventions, and rules and procedures for accounting, including broad and specific guidelines, established by the Financial Accounting Standards Board.
19. “Goodwill” means the difference between the purchase price of a ground ambulance service and the fair market value of the ground ambulance service’s identifiable net assets.

20. "Gross revenue" means:
 - a. The sum of revenues reported in the Ambulance Revenue and Cost Report Exhibit A, page 2, lines 1, 9, and 20; or
 - b. The sum of revenues reported in the Ambulance Revenue and Cost Report Exhibit B, page 3, lines 1, 24, 25, and 26.
21. "Ground ambulance service" means an ambulance service that operates on land.
22. "Ground ambulance service contract" means a written agreement between a certificate holder and a person for the provision of ground ambulance service.
23. "Ground ambulance vehicle" means a motor vehicle, defined in A.R.S. § 28-101, specifically designed to transport ambulance attendants and patients on land.
24. "Indirect costs" means the cost of providing ground ambulance service that does not include the costs of equipment.
25. "Interfacility transport" means a scheduled transport between two health care institutions.
26. "Level of service" means ALS or BLS ground ambulance service, including the type of ambulance attendants used by the ground ambulance service.
27. "Major defect" means a condition that exists on a ground ambulance vehicle that requires the Department or the certificate holder to place the ground ambulance vehicle out-of-service.
28. "Mileage rate" means the monetary amount assessed to a patient for each mile traveled from the point of patient pick-up to the patient's destination point.
29. "Minor defect" means a condition that exists on a ground ambulance vehicle that is not a major defect.
30. "Needs assessment" means a study or statistical analysis that examines the need for ground ambulance service within a service area or proposed service area that takes into account the current or proposed service area's medical, fire, and police services.
31. "Out-of-service" means a ground ambulance vehicle cannot be operated to transport patients.
32. "Patient compartment" means the ground ambulance vehicle body part that holds a patient.
33. "Public necessity" means an identified population needs or requires all or part of the services of a ground ambulance service.
34. "Response code" means the priority assigned to a request for immediate dispatch by a ground ambulance service on the basis of the information available to the certificate holder or the certificate holder's dispatch authority.
35. "Response time" means the difference between the time a certificate holder is notified that a need exists for immediate dispatch and the time the certificate holder's first ground ambulance vehicle arrives at the scene. Response time does not include the time required to identify the patient's need, the scene, and the resources necessary to meet the patient's need.
36. "Response-time tolerance" means the percentage of actual response times for a response code and scene locality that are compliant with the response time approved by the Department for the response code and scene locality, for any 12-month period.
37. "Rural area" means a geographic region with a population of less than 40,000 residents that is not a suburban area.
38. "Scene locality" means an urban, suburban, rural, or wilderness area.
39. "Scheduled transport" means to convey a patient at a prearranged time by a ground ambulance vehicle for which an immediate dispatch and response is not necessary.
40. "Service area" means the geographical boundary designated in a certificate of necessity using the criteria in A.R.S. § 36-2233(E).
41. "Settlement" means the difference between the monetary amount Medicare establishes or AHCCCS pays as an allowable rate and the general public rate a ground ambulance service assesses a patient.
42. "Standby waiting rate" means the monetary amount assessed to a patient by a certificate holder when a ground ambulance vehicle is required to wait in excess of 15 minutes to load or unload

- the patient, unless the excess delay is caused by the ground ambulance vehicle or the ambulance attendants on the ground ambulance vehicle.
43. "Subscription service" means the provision of EMS or transport by a certificate holder to a group of individuals within the certificate holder's service area and the allocation of annual costs among the group of individuals.
 44. "Subscription service contract" means a written agreement for subscription service.
 45. "Subscription service rate" means the monetary amount assessed to a person under a subscription service contract.
 46. "Substandard performance" means a certificate holder's:
 - a. Noncompliance with A.R.S. Title 36, Chapter 21.1, Articles 1 and 2, or 9 A.A.C. 25, or the terms of the certificate holder's certificate of necessity, including all decisions and orders issued by the Director to the certificate holder;
 - b. Failure to ensure that an ambulance attendant complies with A.R.S. Title 36, Chapter 21.1, Articles 1 and 2, or 9 A.A.C. 25, for the level of ground ambulance service provided by the certificate holder; or
 - c. Failure to meet the requirements in 9 A.A.C. 25, Article 10.
 47. "Suburban area" means a geographic region within a 10-mile radius of an urban area that has a population density equal to or greater than 1,000 residents per square mile.
 48. "Third-party payor" means a person, other than a patient, who is financially responsible for the payment of a patient's assessed general public rates and charges for EMS or transport provided to the patient by a ground ambulance service.
 49. "Transfer" means:
 - a. A change of ownership or type of business entity; or
 - b. To move a patient from a ground ambulance vehicle to an air ambulance.
 50. "Transport" means the conveyance of one or more patients in a ground ambulance vehicle from the point of patient pick-up to the patient's initial destination.
 51. "Type of ground ambulance service" means an interfacility transport, a convalescent transport, or a transport that requires an immediate response.
 52. "Urban area" means a geographic region delineated as an urbanized area by the United States Department of Commerce, Bureau of the Census.
 53. "Wilderness area" means a geographic region that has a population density of less than one resident per square mile.

R9-25-902. Application for an Initial Certificate of Necessity; Provision of ALS Services; Transfer of a Certificate of Necessity (Authorized by A.R.S. §§ 36-2204, 36-2232, 36-2233(B), 36-2236(A) and (B), 36-2240)

- A. An applicant for an initial certificate of necessity shall submit to the Department an application packet, in a Department-provided format, that includes:
 1. An application form that contains:
 - a. The legal business or corporate name, address, telephone number, and facsimile number of the ground ambulance service;
 - b. The name, title, address, e-mail address, and telephone number of the following:
 - i. Each applicant and individual responsible for managing the ground ambulance service;
 - ii. The business representative or designated manager;
 - iii. The individual to contact to access the ground ambulance service's records required in R9-25-910; and
 - iv. The statutory agent for the ground ambulance service, if applicable;
 - c. The name, address, and telephone number of the base hospital or centralized medical direction communications center for the ground ambulance service;
 - d. The address and telephone number of the ground ambulance service's dispatch center;

- e. The address and telephone number of each suboperation station located within the proposed service area;
 - f. Whether the ground ambulance service is a corporation, partnership, sole proprietorship, limited liability corporation, or other;
 - g. Whether the business entity is proprietary, non-profit, or governmental;
 - h. A description of the communication equipment to be used in each ground ambulance vehicle and suboperation station;
 - i. The make and year of each ground ambulance vehicle to be used by the ground ambulance service;
 - j. The number of ambulance attendants and the type of licensure, certification, or registration for each attendant;
 - k. The proposed hours of operation for the ground ambulance service;
 - l. The type of ground ambulance service;
 - m. The level of ground ambulance service;
 - n. Acknowledgment that the applicant:
 - i. Is requesting to operate ground ambulance vehicles and a ground ambulance service in this state;
 - ii. Has received a copy of 9 A.A.C. 25 and A.R.S. Title 36, Chapter 21.1; and
 - iii. Will comply with the Department's statutes and rules in any matter relating to or affecting the ground ambulance service;
 - o. A statement that any information or documents submitted to the Department are true and correct; and
 - p. The signature of the applicant or the applicant's designated representative and the date signed;
2. The following information:
- a. Where the ground ambulance vehicles in subsection (A)(1)(i) are located within the applicant's proposed service area;
 - b. A statement of the proposed general public rates;
 - c. A statement of the proposed charges;
 - d. The applicant's proposed response times, response codes, and response-time tolerances for each scene locality in the proposed service area, based on the following:
 - i. The population demographics within the proposed service area;
 - ii. The square miles within the proposed service area;
 - iii. The medical needs of the population within the proposed service area;
 - iv. The number of anticipated requests for each type and level of ground ambulance service in the proposed service area;
 - v. The available routes of travel within the proposed service area;
 - vi. The geographic features and environmental conditions within the proposed service area; and
 - vii. The available medical and emergency medical resources within the proposed service area;
 - e. A plan to provide temporary ground ambulance service to the proposed service area for a limited time when the applicant is unable to provide ground ambulance service to the proposed service area;
 - f. Whether a ground ambulance service currently operates in all or part of the proposed service area and if so, where; and
 - g. Whether an applicant or a designated manager:
 - i. Has ever been convicted of a felony or a misdemeanor involving moral turpitude,
 - ii. Has ever had a license or certificate of necessity for a ground ambulance service suspended or revoked by any state or political subdivision, or

- iii. Has ever operated a ground ambulance service without the required certification or licensure in this or any other state;
 - 3. The following documents:
 - a. A description of the proposed service area by any method specified in A.R.S. § 36-2233(E) and a map that illustrates the proposed service area;
 - b. A projected Ambulance Revenue and Cost Report;
 - c. The financing agreement for all capital acquisitions exceeding \$5,000;
 - d. The source and amount of funding for cash flow from the date the ground ambulance service commences operation until the date cash flow covers monthly expenses;
 - e. Any proposed ground ambulance service contract under A.R.S. §§ 36-2232(A)(1) and 36-2234(K);
 - f. The information and documents specified in R9-25-1101, if the applicant is requesting to establish general public rates;
 - g. Any subscription service contract under A.R.S. §§ 36-2232(A)(1) and 36-2237(B);
 - h. A certificate of insurance or documentation of self-insurance required in A.R.S. § 36-2237(A) and R9-25-909;
 - i. A surety bond if required under A.R.S. § 36-2237(B); and
 - j. The applicant's and designated manager's resume or other description of experience and qualification to operate a ground ambulance service; and
 - 4. Any documents, exhibits, or statements that may assist the Director in evaluating the application or any other information or documents needed by the Director to clarify incomplete or ambiguous information or documents.
- B.** Before an applicant provides ALS, the applicant shall submit to the Department the application packet required in subsection (A) and the following:
 - 1. A current written contract for ALS medical direction; and
 - 2. Proof of professional liability insurance for ALS personnel required in R9-25-909(A)(1)(b).
- C.** When requesting a transfer of a certificate of necessity:
 - 1. The person wanting to transfer the certificate of necessity shall submit a letter to the Department that contains:
 - a. A request that the certificate of necessity be transferred, and
 - b. The name of the person to whom the certificate of necessity is to be transferred; and
 - 2. The person identified in subsection (C)(1)(b) shall submit:
 - a. The application packet in subsection (A); and
 - b. The information in subsection (B), if ALS is provided.
- D.** An applicant shall submit the following fees:
 - 1. \$100 application filing fee for an initial certificate of necessity, or
 - 2. \$50 application filing fee for a transfer of a certificate of necessity.
- E.** The Department shall approve or deny an application under this Section according to 9 A.A.C. 25, Article 12.

R9-25-903. Determining Public Necessity (A.R.S. § 36-2233(B)(2))

- A.** In determining public necessity for an initial or amended certificate of necessity, the Director shall consider the following:
 - 1. The response times, response codes, and response-time tolerances proposed by the applicant for the service area;
 - 2. The population demographics within the proposed service area;
 - 3. The geographic distribution of health care institutions within and surrounding the service area;
 - 4. Whether issuing a certificate of necessity to more than one ambulance service within the same service area is in the public's best interest, based on:
 - a. The existence of ground ambulance service to all or part of the service area;

- b. The response times of and response-time tolerances for ground ambulance service to all or part of the service area;
 - c. The availability of certificate holders in all or part of the service area; and
 - d. The availability of emergency medical services in all or part of the service area;
 - 5. The information in R9-25-902(A)(1) and (A)(2); and
 - 6. Other matters determined by the Director or the applicant to be relevant to the determination of public necessity.
- B.** In deciding whether to issue a certificate of necessity to more than one ground ambulance service for convalescent or interfacility transport for the same service area or overlapping service areas, the Director shall consider the following:
- 1. The factors in subsections (A)(2), (A)(3), (A)(4)(a), (A)(4)(c), (A)(4)(d), (A)(5), and (A)(6);
 - 2. The financial impact on certificate holders whose service area includes all or part of the service area in the requested certificate of necessity;
 - 3. The need for additional convalescent or interfacility transport; and
 - 4. Whether a certificate holder for the service area has demonstrated substandard performance.
- C.** In deciding whether to issue a certificate of necessity to more than one ground ambulance service for a 9-1-1 or similarly dispatched transport within the same service area or overlapping service areas, the Director shall consider the following:
- 1. The factors in subsections (A), (B)(2), and (B)(4);
 - 2. The difference between the response times in the service area and proposed response times by the applicant;
 - 3. A needs assessment adopted by a political subdivision, if any; and
 - 4. A needs assessment, referenced in A.R.S. § 36-2210, adopted by a local emergency medical services coordinating system, if any.

R9-25-904. Application for Renewal of a Certificate of Necessity (A.R.S. §§ 36-2233, 36-2235, 36-2240)

- A.** An applicant for a renewal of a certificate of necessity shall submit to the Department, not less than 60 days before the expiration date of the certificate of necessity, an application packet that includes:
- 1. An application form that contains the information in R9-25-902(A)(1)(a) through (A)(1)(m) and the signature of the applicant;
 - 2. Proof of continuous insurance coverage or a statement of continuing self-insurance, including a copy of the current certificate of insurance or current statement of self-insurance required in R9-25-909;
 - 3. Proof of continued coverage by a surety bond if required under A.R.S. §§ 36-2237(B);
 - 4. A copy of the list of current charges required in R9-25-1109;
 - 5. An affirmation that the certificate holder has and is continuing to meet the conditions of the certificate of necessity, including assessing only those rates and charges approved and set by the Director; and
 - 6. \$50 application filing fee.
- B.** A certificate holder who fails to file a timely application for renewal of the certificate of necessity according to A.R.S. § 36-2235 and this Section, shall cease operations at 12:01 a.m. on the date the certificate of necessity expires.
- C.** To commence operations after failing to file a timely renewal application, a person shall file an initial certificate of necessity application according to R9-25-902 and meet all the requirements for an initial certificate of necessity.
- D.** The Department shall approve or deny an application under this Section according to 9 A.A.C. 25, Article 12.

R9-25-905. Application for Amendment of a Certificate of Necessity (A.R.S. §§ 36-2232(A)(4), 36-2240)

- A. A certificate holder that wants to amend its certificate of necessity shall submit to the Department the application form in R9-25-902(A)(1) and an application filing fee of \$50 for changes in:
1. The legal name of the ground ambulance service;
 2. The legal address of the ground ambulance service;
 3. The level of ground ambulance service;
 4. The type of ground ambulance service;
 5. The service area; or
 6. The response times, response codes, or response-time tolerances.
- B. In addition to the application form in subsection (A), an amending certificate holder shall submit:
1. For the addition of ALS ground ambulance service, the information required in R9-25-902(B)(1) and (B)(2).
 2. For a change in the service area, the information required in R9-25-902(A)(3)(a);
 3. For a change in response times, the information required in subsection R9-25-902(A)(2)(d);
 4. A statement explaining the financial impact and impact on patient care anticipated by the proposed amendment;
 5. Any other information or documents requested by the Director to clarify incomplete or ambiguous information or documents; and
 6. Any documents, exhibits, or statements that the amending certificate holder wishes to submit to assist the Director in evaluating the proposed amendment.
- C. The Department shall approve or deny an application under this Section according to 9 A.A.C. 25, Article 12.

R9-25-906. Determining Response Times, Response Codes, and Response-Time Tolerances for Certificates of Necessity and Provision of ALS Services (A.R.S. §§ 36-2232, 36-2233)

In determining response times, response codes, and response-time tolerances for all or part of a service area, the Director may consider the following:

1. Differences in scene locality, if applicable;
2. Requirements of a 9-1-1 or similar dispatch system for all or part of the service area;
3. Requirements in a contract approved by the Department between a ground ambulance service and a political subdivision;
4. Medical prioritization for the dispatch of a ground ambulance vehicle according to procedures established by the certificate holder's medical direction authority; and
5. Other matters determined by the Director to be relevant to the measurement of response times, response codes, and response-time tolerances.

R9-25-907. Observance of Service Area; Exceptions (A.R.S. § 36-2232)

A certificate holder shall not provide EMS or transport within an area other than the service area identified in the certificate holder's certificate of necessity except:

1. When authorized by a service area's dispatch, before the service area's ground ambulance vehicle arrives at the scene; or
2. According to a back-up agreement.

R9-25-908. Transport Requirements; Exceptions (A.R.S. §§ 36-2224, 36-2232)

A certificate holder shall transport a patient except:

1. As limited by A.R.S. § 36-2224;
2. If the patient is in a health care institution and the patient's medical condition requires a level of care or monitoring during transport that exceeds the scope of practice of the ambulance attendants' certification;

3. If the transport may result in an immediate threat to the ambulance attendant's safety, as determined by the ambulance attendant, certificate holder, or medical direction authority;
4. If the patient is more than 17 years old and refuses to be transported; or
5. If the patient is in a health care institution and does not meet the federal requirements for medically necessary ground vehicle ambulance transport as identified in 42 CFR 410.40.

R9-25-909. Certificate of Insurance or Self-Insurance (A.R.S. §§ 36-2232, 36-2233, 36-2237)

- A.** A certificate holder shall:
1. Maintain with an insurance company authorized to transact business in this state:
 - a. A minimum single occurrence automobile liability insurance coverage of \$500,000 for ground ambulance vehicles; and
 - b. A minimum single occurrence malpractice or professional liability insurance coverage of \$500,000; or
 2. Be self-insured for the amounts in subsection (A)(1).
- B.** A certificate holder shall submit to the Department:
1. A copy of the certificate of insurance; or
 2. Documentation of self-insurance.
- C.** A certificate holder shall submit a copy of the certificate of insurance to the Department no later than five days after the date of issuance of:
1. A renewal of the insurance policy; or
 2. A change in insurance coverage or insurance company.

R9-25-910. Record and Reporting Requirements (A.R.S. §§ 36-2232, 36-2241, 36-2246)

- A.** A certificate holder shall submit to the Department, no later than 180 days after the certificate holder's fiscal year end, the appropriate Ambulance Revenue and Cost Report.
- B.** According to A.R.S. § 36-2241, a certificate holder shall maintain the following records for the Department's review and inspection:
1. The certificate holder's financial statements;
 2. All federal and state income tax records;
 3. All employee-related expense reports and payroll records;
 4. All bank statements and documents verifying reconciliation;
 5. All documents establishing the depreciation of assets, such as schedules or accounting records on ground ambulance vehicles, equipment, office furniture, and other plant and equipment assets subject to depreciation;
 6. All first care forms required in R9-25-514 and R9-25-615;
 7. All patient billing and reimbursement records;
 8. All dispatch records, including the following:
 - a. The name of the ground ambulance service;
 - b. The month of the record;
 - c. The date of each transport;
 - d. The number assigned to the ground ambulance vehicle by the certificate holder;
 - e. Names of the ambulance attendants;
 - f. The scene;
 - g. The actual response time;
 - h. The response code;
 - i. The scene locality;
 - j. Whether the scene to which the ground ambulance vehicle is dispatched is outside of the certificate holder's service area; and
 - k. Whether the dispatch is a scheduled transport;

9. All ground ambulance service back-up agreements, contracts, grants, and financial assistance records related to ground ambulance vehicles, EMS, and transport;
10. All written ground ambulance service complaints; and
11. Information about destroyed or otherwise irretrievable records in a file including:
 - a. A list of each record destroyed or otherwise irretrievable;
 - b. A description of the circumstances under which each record became destroyed or otherwise irretrievable; and
 - c. The date each record was destroyed or became otherwise irretrievable.

R9-25-911. Ground Ambulance Service Advertising (A.R.S. § 36-2232)

- A. A certificate holder shall not advertise that it provides a type or level of ground ambulance service or operates in a service area different from that granted in the certificate of necessity.
- B. When advertising, a certificate holder shall not direct the circumvention of the use of 9-1-1 or another similarly designated emergency telephone number.

R9-25-912. Disciplinary Action (A.R.S. §§ 36-2244, 36-2245)

- A. After notice and opportunity to be heard is given according to the procedures in A.R.S. Title 41, Chapter 6, Article 10, a certificate of necessity may be suspended, revoked, or other disciplinary action taken for the following reasons:
 1. The certificate holder has:
 - a. Demonstrated substandard performance; or
 - b. Been determined not to be fit and proper by the Director;
 2. The certificate holder has provided false information or documents:
 - a. On an application for a certificate of necessity;
 - b. Regarding any matter relating to its ground ambulance vehicles or ground ambulance service; or
 - c. To a patient, third-party payor, or other person billed for service; or
 3. The certificate holder has failed to:
 - a. Comply with the applicable requirements of A.R.S. Title 36, Chapter 21.1, Articles 1 and 2 or 9 A.A.C. 25; or
 - b. Comply with any term of its certificate of necessity or any rates and charges schedule filed by the certificate holder and approved by the Department.
- B. In determining the type of disciplinary action to impose under A.R.S. § 36-2245, the Director shall consider:
 1. The severity of the violation relative to public health and safety;
 2. The number of violations relative to the annual transport volume of the certificate holder;
 3. The nature and circumstances of the violation;
 4. Whether the violation was corrected, the manner of correction, and the time-frame involved; and
 5. The impact of the penalty or assessment on the provision of ground ambulance service in the certificate holder's service area.

Exhibit 9A. Ambulance Revenue and Cost Report, General Information and Certification

Legal Name of Company: _____ CON No. _____
D.B.A. (Doing Business As): _____ Business Phone: () _____
Financial Records Address: _____ City: _____
Zip Code _____
Mailing Address (If Different): _____ City: _____ Zip Code _____
Owner/Manager: _____
Report Contact Person: _____ Phone: () _____ Ext. _____
Report for Period From: _____ To: _____
Method of Valuing Inventory: LIFO: () FIFO: () Other _____ (Explain): _____

Please attach a list of all affiliated organizations (parents/subsidiaries) that exhibit at least 5% ownership/ vesting.

<p>CERTIFICATION</p> <p><i>I hereby certify that I have directed the preparation of the Arizona Ambulance Revenue and Cost Report for the facility listed above in accordance with the reporting requirements of the State of Arizona.</i></p> <p><i>I have read this report and hereby certify that the information provided is true and correct to the best of my knowledge.</i></p> <p><i>This report has been prepared using the accrual basis of accounting.</i></p> <p><i>Authorized Signature:</i> _____</p> <p><i>Title:</i> _____ <i>Date:</i> _____</p>
--

Mail to:
Department of Health Services
Bureau of Emergency Medical Services and Trauma System
Certificate of Necessity and Rates Section
150 North 18th Avenue, Suite 540, Phoenix, AZ 85007
Telephone: (602) 364-3150; Fax: (602) 364-3567
Revised December 2013

AMBULANCE REVENUE AND COST REPORT

AMBULANCE ENTITY: _____ SERVICE

FOR THE PERIOD FROM: _____
TO: _____

STATISTICAL SUPPORT DATA

Line No. DESCRIPTION	(1) SUBSCRIPTION SERVICE TRANSPORTS	(2)** TRANSPORTS UNDER CONTRACT	(3) TRANSPORTS NOT UNDER CONTRACT	(4)
<u>TOTALS</u>				
01 Number of ALS Billable Runs	_____	_____	_____	
02 Number of BLS Billable Runs	_____	_____	_____	
03 Number of Loaded Billable Miles	_____	_____	_____	
04 Waiting Time (Hr. & Min.)	_____	_____	_____	
05 Total Canceled (Non-Billable) Runs	_____	_____	_____	
		Number		

Donated		
Volunteer Services: (OPTIONAL)		Hours
06 Paramedic and IEMT	_____	
07 Emergency Medical Technician - B	_____	
08 Other Ambulance Attendants	_____	
09 Total Volunteer Hours	_____	

**This column reports only those runs where a contracted discount rate was applied. See Page 7 to provide additional information regarding discounted contract runs.

AMBULANCE REVENUE AND COST REPORT

AMBULANCE ENTITY: _____ SERVICE _____

FOR THE PERIOD FROM: _____
TO: _____

STATISTICAL SUPPORT DATA

		(1)	(2) NON-SUBSIDIZED	(3)
Line	SUBSIDIZED			
<u>No.</u>	<u>TYPE OF SERVICE</u>	<u>PATIENTS</u>	<u>PATIENTS</u>	
<u>TOTALS</u>				
01	Number of Advanced Life Support Billable Runs	_____	_____	_____
02	Number of Basic Life Support Billable Runs	_____	_____	_____
03	Number of Loaded Billable Miles	_____	_____	_____
04	Waiting Time (Hours and Minutes)	_____	_____	_____
05	Total Canceled (Non-Billable) Runs	_____	_____	_____

Number

			Hours
Donated	Volunteer Services: (OPTIONAL)		
06	Paramedic, EMT-I(99), and AEMT	_____	_____
07	Emergency Medical Technician (EMT)	_____	_____
08	Other Ambulance Attendants _____	_____	_____
09	Total Volunteer Hours	_____	_____

Note: This page and page 3.1, Routine Operating Revenue, are only for those governmental agencies that apply subsidy to patient billings.

AMBULANCE REVENUE AND COST REPORT

AMBULANCE ENTITY: _____ SERVICE

FOR THE PERIOD FROM: _____
TO: _____

STATEMENT OF INCOME

<u>Line</u>	<u>No. DESCRIPTION</u>	<u>FROM</u>	
	Operating Revenue:		
01	Ambulance Service Routine Operating Revenue		Page 3 Line 10
	\$ _____		
	Less:		
02	AHCCCS Settlement		_____
03	Medicare Settlement		_____
04	Contractual Discounts	Page 7 Line 22	_____
05	Subscription Service Settlement	Page 8 Line 4	_____
06	Other (Attach Schedule)		_____
07	Total		_____

08	Net Revenue from Ambulance Runs		
	\$ _____		
09	Sales of Subscription Service Contracts	Page 8 Line 8	
10	Total Operating Revenue		
	\$ _____		
	Ambulance Operating Expenses:		
11	Bad Debt (Includes Subscription Services Bad Debt)		\$ _____
12	Wages, Payroll Taxes, and Employee Benefits	Page 4 Line 22	_____
13	General and Administrative Expenses	Page 5 Line 20	_____
14	Cost of Goods Sold	Page 3 Line 15	_____
15	Other Operating Expenses	Page 6 Line 28	_____
16	Interest Expense (Attach Schedule IV)	Page 14 CI 4 & 5 Line 28	_____
17	Subscription Service Direct Selling	Page 8 Line 23	_____
18	Total Operating Expenses		_____

19	Ambulance Service Income (Loss) (Line 10 minus Line 18)		
	\$ _____		
	Other Revenue/Expenses:		
20	Other Operating Revenue and Expenses	Page 9 Line 17	\$ _____
21	Non-Operating Revenue and Expense		
22	Non-Deductible Expenses (Attach Schedule)		

23 Total Other Revenues/Expenses

24 Ambulance Service Income (Loss) - Before Income Taxes
\$ _____

Provision for Income Taxes:

25 Federal Income Tax
\$ _____

26 State Income Tax

27 Total Income Tax

28 Ambulance Service - Net Income (Loss)
\$ _____

Page 2

AMBULANCE REVENUE AND COST REPORT

AMBULANCE SERVICE
ENTITY: _____

FOR THE PERIOD FROM: _____
TO: _____

ROUTINE OPERATING REVENUE

Line
No. DESCRIPTION

Ambulance Service Routine Operating Revenue:
01 ALS Base Rate \$ _____
02 BLS Base Rate _____
03 Mileage Charge _____
04 Waiting Charge _____
05 Medical Supplies (Gross Charges) _____
06 Nurses Charges _____
07 Total \$ _____

08 Standby Revenue (Attach Schedule)

09 Other Ambulance Service Revenue (Attach Schedule)

10 Total Ambulance Service Routine Operating Revenue (To Page 2, Line 01) \$ _____

COST OF GOODS SOLD: (MEDICAL SUPPLIES)

11	Inventory at Beginning of Year	_____	
12	Plus Purchases	_____	
13	Plus Other Costs	_____	
14	Less Inventory at End of Year	(_____)	
15	Cost of Goods Sold (To Page 2, Line 14)		\$

Page 3

AMBULANCE REVENUE AND COST REPORT

AMBULANCE ENTITY: _____ SERVICE

FOR THE PERIOD FROM: _____
TO: _____

ROUTINE OPERATING REVENUE

		(1)	(2)	(3)
Line			NON-	
SUBSIDIZED			SUBSIDIZED	
<u>No. DESCRIPTION</u>		<u>PATIENTS</u>	<u>PATIENTS</u>	
<u>TOTALS</u>				
AMBULANCE SERVICE OPERATING REVENUE				
01	ALS Base Rate		\$	_____
	\$ _____	\$		_____
02	BLS Base Rate			_____
	_____			_____
03	Mileage Charge			_____
	_____			_____
04	Waiting Charge			_____
	_____			_____
05	Medical Supplies (Gross Charges)			_____
	_____			_____
06	Nurses' Charges			_____
	_____			_____
07	Total		\$	_____
	\$ _____	\$		_____
08	Standby Revenue (Attach Schedule)			_____
09	Other Ambulance Service Revenue (Attach Schedule)			_____
10	Total Ambulance Service Routine Operating Revenue (Column 3 to Page 2, Line 01)		\$	_____

	Less:			
11	AHCCCS Settlement		\$	_____
	\$ _____	\$		_____
12	Medicare Settlement			_____
	_____			_____
13	Subsidy			_____
	xxxxxxxxxxxxxx			_____
14	Other (Attach Schedule)			_____
	_____			_____
15	Total Settlements (Column 3 to Page 2, Line 06)		\$	_____
	\$ _____	\$		_____

Cost of Goods Sold:

16	Inventory at Beginning of Year	
		\$ _____
17	Plus Purchases	

18	Plus Other Costs	

19	Less Inventory at End of Year	
		(_____)
20	Cost of Goods Sold (Column 3 to Page 2, Line 14)	
		\$ _____

AMBULANCE REVENUE AND COST REPORT

AMBULANCE ENTITY: _____ SERVICE

FOR THE PERIOD FROM: _____
TO: _____

WAGES, PAYROLL TAXES, AND EMPLOYEE BENEFITS

Line No.	DESCRIPTION	No. of *F.T.E.s
----------	-------------	-----------------

01	Gross Wages - OFFICERS/OWNERS (Attach Schedule I, Page 10, Line 7)	\$ _____
02	Payroll Taxes	
03	Employee Fringe Benefits	
04	Total	\$ _____
05	Gross Wages - MANAGEMENT (Attach Schedule II)	\$ _____
06	Payroll Taxes	
07	Employee Fringe Benefits	
08	Total	\$ _____

Gross Wages - AMBULANCE PERSONNEL (Attach Schedule II)

		**Casual Labor	Wages	
09	Paramedic, EMT-I(99) and AEMT			\$ _____
10	Emergency Medical Technician (EMT).			_____
11	Nurses			_____
12	Payroll Taxes			
13	Employee Fringe Benefits			
14	Total			\$ _____

Gross Wages - OTHER PERSONNEL (Attach Schedule II)

15	Dispatch	
	\$ _____	
16	Mechanics	

17	Office and Clerical	
	<hr/>	
18	Other	
	<hr/>	
19	Payroll Taxes	
	<hr/>	
20	Employee Fringe Benefits	
	<hr/>	
21	Total	<hr/>
	\$ <hr/>	
22	Total F.T.E.s' Wages, Payroll Taxes, & Employee Benefits (To Page 2, Line 12) .	<hr/>
	\$ <hr/>	

* Full-time equivalents (F.T.E.) is the sum of all hours for which employee wages were paid during the year divided by 2,080.

** The sum of Casual Labor (wages paid on a per run basis) plus Wages paid is entered in Column 2 by line item. However, when calculating F.T.E.s, do not include casual labor hours worked or expenses incurred.

AMBULANCE REVENUE AND COST REPORT

AMBULANCE SERVICE ENTITY: _____

FOR THE PERIOD FROM: _____ **TO:** _____

WAGES, PAYROLL TAXES, AND EMPLOYEE BENEFITS

Line Ambulance No. DESCRIPTION Percentage	Amount	(1) No. of	(2) Total *F.T.E.s	(3) Allocation Expenditure	(4)
01	Gross Wages - Management (Attach Schedule II)		_____	\$ _____	
02	Payroll Taxes		_____	_____	
03	Employee Fringe Benefits		_____	_____	
04	Total		_____	\$ _____	
Gross Wages - Ambulance Personnel (Attach Schedule):					
	<u>**Contractual</u>		<u>Wages</u>		
05	Paramedic, EMT-I(99) and AEMT . . . _____		\$ _____	_____	
06	Emergency Medical Technician (EMT) _____		_____	_____	
07	Nurses		_____	_____	
08	Drivers		_____	_____	
09	Payroll Taxes		_____	_____	
10	Employee Fringe Benefits		_____	_____	
11	Total		_____	_____	
	\$ _____				
Gross Wages - Other Personnel (Attach Schedule II):					
12	Dispatch			_____	
	\$ _____				
13	Mechanics			_____	
14	Office and Clerical			_____	
15	Other			_____	
16	Payroll Taxes			_____	
17	Employee Fringe Benefits			_____	
18	Total			_____	\$
19	Total F.T.E.s' Wages, Payroll Taxes, and Employee Benefits (To Page 2, Line 12)		\$ _____		

* Full-Time Equivalents (F.T.E.) is the sum of all hours for which employee wages were paid during the year divided by 2,080.

** The sum of Contractual + Wages paid is entered in Column 2 by line item. However, when calculating F.T.E.s, do not include contractual hours worked or expenses incurred.

AMBULANCE REVENUE AND COST REPORT

AMBULANCE SERVICE ENTITY: _____

FOR THE PERIOD FROM: _____ **TO:** _____

WAGES, PAYROLL TAXES, AND EMPLOYEE BENEFITS

<u>Line No.</u>	<u>DESCRIPTION</u>	<u>Basis of Allocations</u>
01	Gross Wages - Management	
02	Payroll Taxes	
03	Employee Fringe Benefits	
04	Total	
	Gross Wages - Ambulance Personnel:	<u>Contractual</u>
		<u>Wages</u>
05	Paramedic, EMT-I(99) and AEMT	
06	Emergency Medical Technician (EMT)	
07	Nurses	
08	Drivers	
09	Payroll Taxes	
10	Employee Fringe Benefits	
11	Total	
	Gross Wages - Other Personnel:	
12	Dispatch	
13	Mechanics	
14	Office and Clerical	
15	Other	
16	Payroll Taxes	
17	Employee Fringe Benefits	
18	Total	

AMBULANCE REVENUE AND COST REPORT

AMBULANCE ENTITY: _____ SERVICE

FOR THE PERIOD FROM: _____
TO: _____

GENERAL AND ADMINISTRATIVE EXPENSES

Line
No. DESCRIPTION

Professional Services:

01	Legal Fees	\$ _____	
02	Collection Fees	_____	
03	Accounting and Auditing		_____
04	Data Processing Fees	_____	
05	Other (Attach Schedule)	_____	
06	Total		
	\$ _____		

Travel and Entertainment:

07	Meals and Entertainment		\$ _____
08	Transportation - Other Company Vehicles		_____
09	Travel	_____	
10	Other (Attach Schedule)		_____
11	Total		
	\$ _____		

Other General and Administrative:

12	Office Supplies		\$ _____
13	Postage	_____	
14	Telephone	_____	
15	Advertising	_____	
16	Professional Liability Insurance		_____
17	Dues and Subscriptions	_____	
18	Other (Attach Schedule)	_____	
19	Total		
	\$ _____		
20	Total General and Administrative Expenses (To Page 2, Line 13)		
	\$ _____		

AMBULANCE REVENUE AND COST REPORT

AMBULANCE SERVICE ENTITY: _____

FOR THE PERIOD FROM: _____ **TO:** _____

GENERAL AND ADMINISTRATIVE EXPENSES

Line Ambulance No. DESCRIPTION Percentage	Amount	(1) Total	(2) Allocation Expenditure	(3)
Professional Services:				
01 Legal Fees				
\$ _____		\$ _____		
02 Collection Fees				
03 Accounting and Auditing				
04 Data Processing Fees.....			_____	
05 Other (Attach Schedule)				
_____		_____		
06 Total			\$ _____	
\$ _____				
Travel and Entertainment:				
07 Meals and Entertainment			\$ _____	
_____	\$ _____			
08 Transportation - Other Company Vehicles			_____	
09 Travel			_____	
10 Other (Attach Schedule)			_____	

11 Total			\$ _____	
\$ _____				
Other General and Administrative:				
12 Office Supplies				
\$ _____		\$ _____		
13 Postage			_____	
14 Telephone			_____	
15 Advertising			_____	
16 Professional Liability Insurance			_____	
17 Dues and Subscriptions			_____	
18 Other (Attach Schedule)			_____	

19 Total			\$ _____	
\$ _____				
20 Total General & Administrative Expenses (to Page 2, Line 13)				
\$ _____		\$ _____		

AMBULANCE REVENUE AND COST REPORT

AMBULANCE SERVICE ENTITY: _____

FOR THE PERIOD FROM: _____ **TO:** _____

GENERAL AND ADMINISTRATIVE EXPENSES (cont.)

<u>Line No.</u>	<u>DESCRIPTION</u>	<u>Basis of Allocations</u>
Professional Services:		
01	Legal Fees	
02	Collection Fees	
03	Accounting and Auditing	
04	Data Processing Fees.....	
05	Other (Attach Schedule)	
06	Total	
Travel and Entertainment:		
07	Meals and Entertainment	
08	Transportation - Other Company Vehicles	
09	Travel	
10	Other (Attach Schedule)	
11	Total	
Other General and Administrative:		
12	Office Supplies	
13	Postage	
14	Telephone	
15	Advertising	
16	Professional Liability Insurance	
17	Dues and Subscriptions	
18	Other (Attach Schedule)	
19	Total	

AMBULANCE REVENUE AND COST REPORT

AMBULANCE ENTITY: _____ SERVICE

FOR THE PERIOD FROM: _____
 TO: _____

OTHER OPERATING EXPENSES

Line No. OTHER OPERATING EXPENSES

Depreciation and Amortization:

01 Depreciation (Attach Schedule III) (From Line 20, Col I, Page 13) \$ _____
 02 Amortization _____
 03 Total _____
 \$ _____

04 Rent/Lease (Attach Schedule III) (From Line 20, Col K, Page 13) _____
 \$ _____

Building/Station Expense:

05 Building and Cleaning Supplies \$ _____
 06 Utilities _____
 07 Property Taxes _____
 08 Property Insurance _____
 09 Repairs and Maintenance _____
 10 Other (Attach Schedule) _____
 11 Total _____
 \$ _____

Vehicle Expense - Ambulance Units:

12 License/Registration \$ _____
 13 Fuel _____
 14 General Vehicle Service and Maintenance. _____
 15 Major Repairs _____
 16 Insurance - Service Vehicles. _____
 17 Other (Attach Schedule). _____
 18 Total _____
 \$ _____

Other Expenses:

19 Dispatch _____
 20 Education/Training _____
 21 Uniforms and Uniform Cleaning _____
 22 Meals and Travel for Ambulance Personnel _____
 23 Maintenance Contracts _____

24 Minor Equipment - Not Capitalized _____
25 Ambulance Supplies - Nonchargeable _____
26 Other (Attach Schedule) _____

27 Total _____
\$ _____

28 Total Other Operating Expenses (To Page 2, Line 15) _____
\$ _____

AMBULANCE REVENUE AND COST REPORT

AMBULANCE SERVICE ENTITY: _____

FOR THE PERIOD FROM: _____ TO: _____

OTHER OPERATING EXPENSES

	(1)	(2)	(3)
	Total	Allocation	
Ambulance			
<u>OTHER OPERATING EXPENSES</u>			
<u>Expenditure</u>	<u>Percentage</u>	<u>Amount</u>	
Depreciation and Amortization:			
Depreciation (Attach Schedule III) (From Line 20, Col I, Page 12) .			
\$ _____			
Amortization			

Total			
\$ _____			
Rent/Lease (Attach Schedule III) Line 20, Col K, Page 12			
\$ _____			
Building/Station Expense:			
Building and Cleaning Supplies			
\$ _____			
Utilities			

Property Taxes			

Property Insurance			

Repairs and Maintenance			

Other (Attach Schedule)			

Total			
\$ _____			
Vehicle Expense - Ambulance Units:			
License/Registration			
\$ _____			
Fuel			

General Vehicle Service and Maintenance			

Major Repairs			

Insurance - Service Vehicles			

Other (Attach Schedule)			

Total			
\$ _____			
Other Expenses:			
Dispatch			
\$ _____			
Education/Training			

Uniforms and Uniform Cleaning			

Meals and Travel for Ambulance Personnel			

Maintenance Contracts			

Minor Equipment - Not Capitalized			

Ambulance Supplies - Nonchargeable	_____
Other (Attach Schedule)	_____
Total	_____
\$	_____
Total Other Operating Expenses (To Page 2, Line 15)	_____
\$	_____

Page 6.1

AMBULANCE REVENUE AND COST REPORT

AMBULANCE SERVICE ENTITY: _____

FOR THE PERIOD FROM: _____ **TO:** _____

OTHER OPERATING EXPENSES

Line		<u>Basis of Allocations</u>
No.	<u>OTHER OPERATING EXPENSES</u>	
	Depreciation and Amortization:	
01	Depreciation	
02	Amortization	
03	Total	
04	Rent/Lease	
	Building/Station Expense:	
05	Building and Cleaning Supplies	
06	Utilities	
07	Property Taxes	
08	Property Insurance	
09	Repairs and Maintenance	
10	Other (Attach Schedule)	
11	Total	
	Vehicle Expense - Ambulance Units:	
12	License/Registration	
13	Fuel	
14	General Vehicle Service and Maintenance	
15	Major Repairs	
16	Insurance - Service Vehicles	
17	Other (Attach Schedule)	
18	Total	
	Other Expenses:	
19	Dispatch	
20	Education/Training	
21	Uniforms and Uniform Cleaning	
22	Meals and Travel for Ambulance Personnel	
23	Maintenance Contracts	
24	Minor Equipment - Not Capitalized	
25	Ambulance Supplies - Nonchargeable	

26 Other (Attach Schedule)

27 Total

AMBULANCE REVENUE AND COST REPORT

AMBULANCE SERVICE ENTITY: _____

FOR THE PERIOD FROM: _____ **TO:** _____

DETAIL OF CONTRACTUAL ALLOWANCES

Line No.	Name of Contracting Entity	Total Billable Runs	Gross Billing	Percent	Discount
01	_____	_____	_____		
02	_____	_____	_____		
03	_____	_____	_____		
04	_____	_____	_____		
05	_____	_____	_____		
06	_____	_____	_____		
07	_____	_____	_____		
08	_____	_____	_____		
09	_____	_____	_____		
10	_____	_____	_____		
11	_____	_____	_____		
12	_____	_____	_____		
13	_____	_____	_____		
14	_____	_____	_____		
15	_____	_____	_____		

16 _____

17 _____

18 _____

19 _____

20 _____

21 _____

22 Total (To Page 2, Line 4)

AMBULANCE REVENUE AND COST REPORT

AMBULANCE ENTITY: _____ **SERVICE**

FOR THE PERIOD FROM: _____
TO: _____

SUBSCRIPTION SERVICE REVENUE AND
 DIRECT SELLING EXPENSES

Line No.	Description	To
01	Billings at Fully Established Rate	\$ _____
	Less:	
02	AHCCCS Settlement	
03	Medicare Settlement	
04	Subscription Service Settlements (To Page 2, Line 5)	
05	Subscription Service Bad Debt	
06	<u>Total</u>	\$ _____
07	Net Revenue from Subscription Service Runs	_____
08	Sales of Subscription Service (To Page 2, Line 9)	_____
09	Other Revenue (Attach Schedule)	_____
10	Total Subscription Service Revenue	\$ _____

Direct Expenses Incurred Selling Subscription Contracts:

11	Salaries/Wages	\$ _____
12	Payroll Taxes	_____
13	Employee Fringe Benefits	_____
14	Professional Services	_____

- 15 Contract Labor

- 16 Travel

- 17 Other General and Administrative Expenses

- 18 Depreciation/Amortization

- 19 Rent/Lease

- 20 Building/Station Expense

- 21 Transportation/Vehicles

- 22 Other (Attach Schedule)

- 23 Total Subscription Service Expenses (To Page 2, Line 17).....

\$ _____
Page 8

AMBULANCE REVENUE AND COST REPORT

AMBULANCE ENTITY: _____ SERVICE _____

FOR THE PERIOD FROM: _____
TO: _____

OTHER OPERATING REVENUES AND EXPENSES

Line No. DESCRIPTION

Other Operating Revenues:

01	Supportive Funding - Local (Attach Schedule)	\$ _____
02	Grant Funds - State (Attach Schedule)	_____
03	Grant Funds - Federal (Attach Schedule)	_____
04	Grant Funds - Other (Attach Schedule)	_____
05	Patient Finance Charges	_____
06	Patient Late Payment Charges	_____
07	Interest Earned - Related Person/Organization	_____
08	Interest Earned - Other	_____
09	Gain on Sale of Operating Property	_____
10	Other: _____	_____
11	Other: _____	_____
12	Total Operating Revenue	\$ _____

Other Operating Expenses:

13	Loss on Sale of Operating Property	\$ _____
14	Other: _____	_____
15	Other: _____	_____
16	Total Other Operating Expenses	\$ _____

17 Net Other Operating Revenues and Expenses (To Page 2, Line 20)
\$ _____

Page 9

AMBULANCE REVENUE AND COST REPORT

AMBULANCE SERVICE ENTITY: _____

FOR THE PERIOD FROM: _____ **TO:** _____

DETAIL OF SALARIES/WAGES
OFFICERS/OWNERS
SCHEDULE 1

Wages Paid by Category

Totals

Line No.	Name	Title	% of Owner-ship	Management	*FTE	EMCT	*FTE	Office	*FTE	Other	*FTE	Wages Paid To Owners	*FTE
01	_____	_____	_____	\$_____	_____	\$_____	_____	\$_____	_____	\$_____	_____	\$_____	_____
02	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
03	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
04	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
05	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
06	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	1
07	TOTAL	=====	=====	\$=====	=====	\$=====	=====	\$=====	=====	\$=====	=====	\$=====	=====

* Full-time equivalents (F.T.E.) Is the sum of all hours for which employee wages were paid during the year divided by 2080.

1 Total wages paid to owners to Page 4 Col 2 Line 01

2 Total FTEs to Page 4 Col 1 Line 01

AMBULANCE REVENUE AND COST REPORT

AMBULANCE ENTITY: _____ SERVICE _____

FOR THE PERIOD FROM: _____
TO: _____

OPERATING EXPENSES
DETAIL OF SALARIES/WAGES
SCHEDULE II

Line
No. Detail of Salaries/Wages - Other Than Officers/Owners

01 MANAGEMENT:

METHOD OF COMPENSATION:

Certification \$s Per Run and/or Title	Scheduled Shifts (I.e. 40 or 60 hours a week)	Wage	Hourly Salary	Annual or Shift
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

02 AMBULANCE PERSONNEL:

_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

03 OTHER PERSONNEL:

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

AMBULANCE REVENUE AND COST REPORT

AMBULANCE SERVICE ENTITY: _____

FOR THE PERIOD FROM: _____ **TO:** _____

DEPRECIATION AND/OR RENT/LEASE EXPENSE
SCHEDULE III
AND
ONLY

AMBULANCE VEHICLES
ACCESSORIAL EQUIPMENT

	A	B	C	D	E	F	G	H	I	J	K
Line No.	Description of Property	Date Placed in Service	Cost or Other Basis	Business Use Percent	Basis for Depreciation	Method	Recovery Period	Depreciation Prior Years	Current Year Depreciation	Remaining Basis	Rent/Lease Amount*
01											
02											
03											
04											
05											
06											
07											
08											
09											
10											
11											
12											
13											
14											
15											
16											
17											
18											
19											
20	SUBTOTAL	XXX	XXX	XXX	XXX	XXX	XXX	XXX	1	XXX	2

* Complete Description of property, date placed in service, and rent/lease amount only.
 1 To Page 13, Line 19, Column I
 2 To Page 13, Line 19, Column K

AMBULANCE REVENUE AND COST REPORT

AMBULANCE SERVICE ENTITY: _____

FOR THE PERIOD FROM: _____ **TO:** _____

**DEPRECIATION AND/OR RENT/LEASE EXPENSE
SCHEDULE III**

ALL OTHER ITEMS

	A	B	C	D	E	F	G	H	I	J	K
Line No.	Description of Property	Date Placed in Service	Cost or Other Basis	Business Use Percent	Basis for Depreciation	Method	Recovery Period	Depreciation Prior Years	Current Year Depreciation	Remaining Basis	Rent/Lease Amount*
01											
02											
03											
04											
05											
06											
07											
08											
09											
10											
11											
12											
13											
14											
15											
16											
17											
18	SUBTOTAL	XXX	XXX	XXX	XXX	XXX	XXX	XXX		XXX	
19	SUBTOTAL from Page 12, Line 20	XXX	XXX	XXX	XXX	XXX	XXX	XXX		XXX	
20	SUM of Line 18 and 19	XXX	XXX	XXX	XXX	XXX	XXX	XXX	3	XXX	4

* Complete Description of property, date placed in service, and rent/lease amount only.

3 To Page 6, Line 01

4 To Page 6, Line 04

AMBULANCE REVENUE AND COST REPORT

AMBULANCE ENTITY: _____ SERVICE

FOR THE PERIOD FROM: _____
TO: _____

DETAIL OF INTEREST - Schedule IV

		(1)	(2)	(3)	(4)
			Principal Balance		
Interest Expense					
Line		Interest	Beginning of	End of	Related Persons or
<u>No. Description</u>		<u>Rate</u>	<u>Period</u>	<u>Period</u>	<u>Organizations</u>
<u>Other</u>					
	Service Vehicles & Accessorial Equipment				
	Name of Payee:				
01	_____	_____ %	\$ _____	\$ _____	
\$	_____			\$ _____	
02	_____				
03	_____				
04	_____				
	Communication Equipment				
	Name of Payee:				
05	_____	_____ %	\$ _____	\$ _____	
\$	_____	\$ _____			
06	_____				
07	_____				
	Other Property and Equipment				
	Name of Payee:				
08	_____	_____ %	\$ _____	\$ _____	
\$	_____	\$ _____			
09	_____				
10	_____				
	Working Capital				
	Name of Payee:				
11	_____	_____ %	\$ _____	\$ _____	
\$	_____	\$ _____			
12	_____				
13	_____				
	Other				
	Name of Payee:				
14	_____	_____ %	\$ _____	\$ _____	\$
	_____	\$ _____			
15	TOTAL		\$ _____	\$ _____	
\$	_____	\$ _____			

------(To Page 2, Column 2, Line

16)-----

AMBULANCE REVENUE AND COST REPORT

AMBULANCE ENTITY: _____ SERVICE

FOR THE PERIOD FROM: _____
TO: _____

BALANCE SHEET

ASSETS

CURRENT ASSETS

01	Cash	\$ _____	
02	Accounts Receivable	_____	
03	Less: Allowance for Doubtful Accounts	_____	
04	Inventory	_____	
05	Prepaid Expenses	_____	
06	Other Current Assets	_____	
07	TOTAL CURRENT ASSETS		\$ _____

PROPERTY & EQUIPMENT

08	Less: Accumulated Depreciation	\$ _____	
----	--------------------------------	----------	--

09	OTHER NONCURRENT ASSETS	\$ _____	
----	-------------------------	----------	--

10	TOTAL ASSETS	\$ _____	
----	--------------	----------	--

LIABILITIES AND EQUITY

CURRENT LIABILITIES

11	Accounts Payable	\$ _____	
12	Current Portion of Notes Payable	_____	
13	Current Portion of Long Term Debt	_____	
14	Deferred Subscription Income	_____	
15	Accrued Expenses and Other	_____	
16	_____	_____	
17	_____	_____	
18	TOTAL CURRENT LIABILITIES		\$ _____

19	NOTES PAYABLE	_____	
----	---------------	-------	--

20	LONG TERM DEBT OTHER	_____	
----	----------------------	-------	--

21	TOTAL LONG-TERM DEBT	\$ _____	
----	----------------------	----------	--

EQUITY AND OTHER CREDITS

Paid-in Capital:

22	Common Stock	\$ _____	
23	Paid-In Capital in Excess of Par Value	_____	
24	Contributed Capital	_____	
25	Retained Earnings	_____	
26	Fund Balances	_____	

27 TOTAL EQUITY \$ _____

28 TOTAL LIABILITIES & EQUITY \$ _____

AMBULANCE REVENUE AND COST REPORT

AMBULANCE SERVICE
ENTITY: _____

FOR THE PERIOD FROM: _____
TO: _____

STATEMENT OF CASH FLOWS

OPERATING ACTIVITIES:

01	Net (loss) Income	\$ _____
	Adjustments to reconcile net income to net cash provided by operating activities:	
02	Depreciation Expense	_____
03	Deferred Income Tax	_____
04	Loss (gain) on Disposal of Property and Equipment	_____
	(Increase) Decrease in:	
05	Accounts Receivable	_____
06	Inventories	_____
07	Prepaid Expenses	_____
	(Increase) Decrease in:	
08	Accounts Payable	_____
09	Accrued Expenses	_____
10	Deferred Subscription Income	_____
11	Net Cash Provided (Used) by Operating Activities	
	\$ _____	

INVESTING ACTIVITIES:

12	Purchases of Property and Equipment	\$ _____
13	Proceeds from Disposal of Property and Equipment	_____
14	Purchases of Investments	_____
15	Proceeds from Disposal of Investments	_____
16	Loans Made	_____
17	Collections on Loans	_____
18	Other _____	_____
19	Net Cash Provided (Used) by Investing Activities	
	\$ _____	

FINANCING ACTIVITIES:

	New Borrowings:	
20	Long-Term	\$ _____
21	Short-Term	_____
	Debt Reduction:	
22	Long-Term	_____
23	Short-Term	_____
24	Capital Contributions	_____
25	Dividends paid	_____

26 Net Cash Provided (Used) by Financing Activities
\$ _____
27 Net Increase (Decrease) in Cash
\$ _____
28 Cash at Beginning of Year
\$ _____
29 Cash at End of Year
\$ _____

30 **SUPPLEMENTAL DISCLOSURES:**
Non-cash Investing and Financing Transactions:

31 _____
\$ _____
32 _____
33 Interest Paid (Net of Amounts Capitalized)
34 Income Taxes Paid

Department of Health Services
Annual Ambulance Financial Report

Reporting Ambulance Service

Report Fiscal Year
From: / / / **To:** / / /
 Mo. Day Year Mo. Day Year

CERTIFICATION

I hereby certify that I have directed the preparation of the enclosed annual report in accordance with the reporting requirements of the State of Arizona.

I have read this report and hereby certify that the information provided is true and correct to the best of my knowledge.

This report has been prepared using the accrual basis of accounting.

Authorized Signature: _____ *Date:* _____

Print Name and Title: _____

Mail to:

Department of Health Services
Bureau of Emergency Medical Services and Trauma System
Certificate of Necessity and Rates Section
150 North 18th Avenue, Suite 540
Phoenix, AZ 85007
Telephone: (602) 364-3150
Fax: (602) 364-3567

AMBULANCE REVENUE AND COST REPORT

AMBULANCE ENTITY: _____ SERVICE

FOR THE PERIOD FROM: _____
TO: _____

STATISTICAL SUPPORT DATA

Line No.	DESCRIPTION	(1) SUBSCRIPTION SERVICE TRANSPORTS	*(2) TRANSPORTS UNDER CONTRACT	(3) TRANSPORTS NOT UNDER CONTRACT	(4)
	TOTALS				
01	Number of ALS Billable Transports:	_____	_____	_____	
02	Number of BLS Billable Transports:	_____	_____	_____	
03	Number of Loaded Billable Miles:	_____	_____	_____	
04	Waiting Time (Hr. & Min.):	_____	_____	_____	
05	Canceled (Non-Billable) Runs:	_____	_____	_____	

AMBULANCE SERVICE ROUTINE OPERATING REVENUE

06	ALS Base Rate Revenue	\$ _____			
07	BLS Base Rate Revenue	_____			
08	Mileage Charge Revenue	_____			
09	Waiting Charge Revenue	_____			
10	Medical Supplies Charge Revenue		_____		
11	Nurses Charge Revenue	_____			
12	Standby Charge Revenue (Attach Schedule)		_____		

13 TOTAL AMBULANCE SERVICE ROUTINE OPERATING REVENUE
\$ _____

SALARY AND WAGE EXPENSE DETAIL

GROSS WAGES:

****No. of**

F.T.E.s

14 Management
\$ _____ \$ _____

15 Paramedics, EMT-I(99)s, and AEMTs.
\$ _____ \$ _____

16 Emergency Medical Technician (EMT).
\$ _____ \$ _____

17 Other Personnel
\$ _____ \$ _____

18 Payroll Taxes and Fringe Benefits - All Personnel.
\$ _____ \$ _____

*This column reports only those runs where a contracted discount rate was applied.

**Full-time equivalents (F.T.E.) is the sum of all hours for which employees' wages were paid during the year divided by 2080.

AMBULANCE REVENUE AND COST REPORT

AMBULANCE SERVICE
 ENTITY: _____

FOR THE PERIOD FROM: _____
 TO: _____

SCHEDULE OF REVENUES AND EXPENSES

Line No.	<u>DESCRIPTION</u>	<u>FROM</u>
Operating Revenues:		
01	Total Ambulance Service Operating Revenue	Page 2, Line 13
	\$ _____	
Settlement Amounts:		
02	AHCCCS	(
)	
03	Medicare	(
)	
04	Subscription Service	(
)	
05	Contractual	(
)	
06	Other	(
)	
07	Total (Sum of Lines 02 through 06)	(
)	
08	Total Operating Revenue (Line 01 minus Line 07)	\$

Operating Expenses:		
09	Bad Debt	
10	Total Salaries, Wages, and Employee- Related Expenses	
	\$ _____	
11	Professional Services	

12	Travel and Entertainment	

13	Other General Administrative	

14	Depreciation	

15	Rent/Leasing	

16	Building/Station	

17	Vehicle Expense	

18	Other Operating Expense	

19 Cost of Medical Supplies Charged to Patients

20 Interest

21 Subscription Service Sales Expense

22 Total Operating Expense (Sum of Lines 09 through 21)

23 Total Operating Income or Loss (Line 08 minus Line 22).

\$ _____

24 Subscription Contract Sales

25 Other Operating Revenue

26 Local Supportive Funding

27 Other Non-Operating Income (Attach Schedule).

28 Other Non-Operating Expense (Attach Schedule).

29 NET INCOME/(LOSS) (Line 23 plus Sum of Lines 24 through 28).

\$ _____

AMBULANCE REVENUE AND COST REPORT

AMBULANCE ENTITY: _____ SERVICE

FOR THE PERIOD FROM: _____
TO: _____

BALANCE SHEET

ASSETS

CURRENT ASSETS

01	Cash	\$ _____	
02	Accounts Receivable	_____	
03	Less: Allowance for Doubtful Accounts	_____	
04	Inventory	_____	
05	Prepaid Expenses	_____	
06	Other Current Assets	_____	
07	TOTAL CURRENT ASSETS		\$ _____

PROPERTY & EQUIPMENT

08	Less: Accumulated Depreciation	\$ _____	
----	--------------------------------	----------	--

09	OTHER NONCURRENT ASSETS	\$ _____	
----	-------------------------	----------	--

10	TOTAL ASSETS	\$ _____	
----	--------------	----------	--

LIABILITIES AND EQUITY

CURRENT LIABILITIES

11	Accounts Payable	\$ _____	
12	Current Portion of Notes Payable	_____	
13	Current Portion of Long term Debt	_____	
14	Deferred Subscription Income	_____	
15	Accrued Expenses and Other	_____	
16	_____	_____	
17	_____	_____	
18	TOTAL CURRENT LIABILITIES		\$ _____

19	NOTES PAYABLE	_____	
----	---------------	-------	--

20	LONG TERM DEBT OTHER	_____	
----	----------------------	-------	--

21	TOTAL LONG-TERM DEBT	\$ _____	
----	----------------------	----------	--

EQUITY AND OTHER CREDITS

Paid-in Capital:

22	Common Stock	\$ _____	
23	Paid-In Capital in Excess of Par Value	_____	
24	Contributed Capital	_____	
25	Retained Earnings	_____	
26	Fund Balances	_____	

27 TOTAL EQUITY

\$ _____

28 TOTAL LIABILITIES & EQUITY

\$

Page 4

AMBULANCE REVENUE AND COST REPORT

AMBULANCE ENTITY: _____ SERVICE

FOR THE PERIOD FROM: _____
TO: _____

STATEMENT OF CASH FLOWS

OPERATING ACTIVITIES:

01	Net (loss) Income	\$ _____
	Adjustments to reconcile net income to net cash provided by operating activities:	
02	Depreciation Expense	_____
03	Deferred Income Tax	_____
04	Loss (gain) on Disposal of Property and Equipment	_____
	(Increase) Decrease in:	
05	Accounts Receivable	_____
06	Inventories	_____
07	Prepaid Expenses	_____
	(Increase) Decrease in:	
08	Accounts Payable	_____
09	Accrued Expenses	_____
10	Deferred Subscription Income	_____
11	Net Cash Provided (Used) by Operating Activities	
	\$ _____	

INVESTING ACTIVITIES:

12	Purchases of Property and Equipment	_____
13	Proceeds from Disposal of Property and Equipment	_____
14	Purchases of Investments	_____
15	Proceeds from Disposal of Investments	_____
16	Loans Made	_____
17	Collections on Loans	_____
18	Other _____	_____
19	Net Cash Provided (Used) by Investing Activities	
	\$ _____	

FINANCING ACTIVITIES:

New Borrowings:		
20	Long-Term	_____
21	Short-Term	_____
Debt Reduction:		
22	Long-Term	_____
23	Short-Term	_____
24	Capital Contributions	_____
25	Dividends paid	_____
26	Net Cash Provided (Used) by Financing Activities	
	\$ _____	
27	Net Increase (Decrease) in Cash	
	\$ _____	
28	Cash at Beginning of Year	
	\$ _____	

29 Cash at End of Year
\$ _____

30 SUPPLEMENTAL DISCLOSURES:

Non-cash Investing and Financing Transactions:

31 _____
\$ _____

32 _____

33 Interest Paid (Net of Amounts Capitalized)

34 Income Taxes Paid

INSTRUCTIONS

Page 1: COVER

1. Enter the name of the ambulance service on the line "Reporting Ambulance Service."
2. Print the name and title of the ambulance service's authorized representative on the lines indicated; enter the date of signature; authorized representative must sign the report.

Page 2: STATISTICAL SUPPORT DATA and ROUTINE OPERATING REVENUE

Enter the ambulance service's business name and the appropriate reporting period.

Statistical Support Data:

- Lines 01-02: Enter the number of billable ALS and BLS transports for each of the three categories. Subscription Service Transports should not be included with Transports Under Contract.
- Lines 03-04: Enter the total of patient loaded transport miles and waiting times for each of the transport categories.
- Line 05: List TOTAL of canceled/non-billable runs.

Ambulance Service Routine Operating Revenue:

- Line 06: Enter the total amount of all ALS Base Rate gross billings.
- Line 07: Enter the total amount of all BLS Base Rate gross billings.
- Line 08: Enter the total of Mileage Charge gross billings.
- Line 09: Enter the total Waiting Time gross billings.
- Line 10: Enter the total of all gross billings of Medical Supplies to patients.
- Line 11: RESERVED FOR FUTURE USE - Charges for Nurses currently are not allowed.
- Line 12: Enter the total of all Standby Time charges. (Attach a schedule showing sources.)
- Line 13: Add the totals from Line 06 through Line 12. Enter sum on Line 13.

Salary and Wage Expense Detail:

- Line 14: Enter the total salary amount allocated and paid to Management of the ambulance service.
- Line 15: Enter the total salary amount allocated and paid to Paramedics, EMT-I(99)s, and AEMTs.
- Line 16: Enter the total salary amount allocated and paid to Emergency Medical Technicians (EMTs).
- Line 17: Enter the total salary amount allocated and paid to Other Personnel involved with the ambulance service. (Examples: Dispatch, Mechanics, Office)
- Line 18: Enter the total allocated amount of Payroll Taxes and Fringe Benefits paid to employees included in lines 14 through 17.

ANNUAL AMBULANCE FINANCIAL REPORT

EXPENSE CATEGORIES FOR USE ON PAGE 3

- Line 09 Bad Debt
- Line 10 Total Salaries, Wages, and Employee-Related Expenses
 - Salaries, Wages, Payroll Taxes, and Employee Benefits
- Line 11 Professional Services
 - Legal/Management Fees
 - Collection Fees
 - Accounting/Auditing
 - Data Processing Fees
- Line 12 Travel and Entertainment (Administrative)
 - Meals and Entertainment
 - Travel/Transportation
- Line 13 Other General and Administrative
 - Office Related (Supplies, Phone, Postage, Advertising)
 - Professional Liability Insurance
 - Dues, Subscriptions, Miscellaneous
- Line 14 Depreciation
- Line 15 Rent/Leasing
- Line 16 Building/Station
 - Utilities, Property Taxes/Insurance, Cleaning/Maintenance
- Line 17 Vehicle Expenses
 - License/Registration
 - Repairs/Maintenance
 - Insurance
- Line 18 Other Operating Expenses
 - Dispatch Contracts
 - Employee Education/Training, Uniforms, Travel/Meals
 - Maintenance Contracts
 - Minor Equipment, Non-Chargeable Ambulance Supplies
- Line 19 Cost of Medical Supplies Charged to Patients
- Line 20 Interest Expense
 - Interest on: Bank Loans/Lines of Credit
- Line 21 Subscription Service Sales Expenses
 - Sales Commissions, Printing

INSTRUCTIONS (cont'd)

Page 3: SCHEDULE OF REVENUES AND EXPENSES

Operating Revenues:

- Line 01: Transfer appropriate total from Page 2 as indicated.
- Line 02: Enter settlement amounts from AHCCCS transports. (DO NOT include settlement amounts resulting from a transport made under a SUBSCRIPTION SERVICE CONTRACT)
- Line 03: Enter settlement amounts from Medicare transports. (DO NOT include settlement amounts resulting from a transport made under a SUBSCRIPTION SERVICE CONTRACT)
- Line 04: Enter total of ALL settlement amounts from Subscription Service Contract transports.
- Line 05: Enter total of ALL settlement amounts from Contractual transports only.

- Line 06: Enter total from any other settlement sources.

- Line 07: Enter sum of lines 02 through 06.
- Line 08: Total Operating Revenue (The amount from Line 01 minus Line 07).

Operating Expenses:

- Lines 09-21: Report as either actual or allocated from expenses shared with Fire or other departments.
- Line 22: Enter the total sum of lines 09 through 21.

- Line 23: Enter the difference of line 08 minus line 22.

- Line 24: Enter the gross amount of sales from Subscription Service Contracts.
- Line 25: Enter the amount of Other Operating Revenues.
Ex: Federal, State or Local Grants, Interest Earned, Patient Finance Charges.

- Line 26: Enter the total of Local Supportive Funding.
- Line 27: List other non-operating revenues (Ex: Donations, sales of assets, fund raisers).

- Line 28: List other non-operating expenses (Ex: Civil fines or penalties, loss on sale of assets).
- Line 29: Net Income (Line 23 plus Lines 24 through 27, minus Line 28).

Page 4: BALANCE SHEET

Current audited financial statements may be submitted in lieu of this page.

Page 5: STATEMENT OF CASH FLOWS

Current audited financial statements may be submitted in lieu of this page.

Questions regarding this reporting form can be submitted to:
Arizona Department of Health Services
Bureau of Emergency Medical Services and Trauma System
Certificate of Necessity and Rates Section

150 North 18th Avenue, Suite 540
Phoenix, AZ 85007
Telephone: (602) 364-3150
Fax: (602) 364-3567

ARTICLE 10. GROUND AMBULANCE VEHICLE REGISTRATION

R9-25-1001. Initial and Renewal Application for a Certificate of Registration (A.R.S. §§ 36-2212, 36-2232, 36-2240)

- A. A person applying for an initial or renewal certificate of registration of a ground ambulance vehicle shall submit an application form to the Department that contains:
 - 1. The applicant's legal business or corporate name;
 - 2. The applicant's mailing address, physical address of the business, and business, facsimile, and emergency telephone numbers;
 - 3. The identifying information of the ground ambulance vehicle, including:
 - a. The make of the ground ambulance vehicle;
 - b. The ground ambulance vehicle manufacture year;
 - c. The ground ambulance vehicle identification number;
 - d. The unit number of the ground ambulance vehicle;
 - e. The ground ambulance vehicle's state license number; and
 - f. The location at which the ground ambulance vehicle will be available for inspection;
 - 4. The identification number of the certificate of necessity to which the ground ambulance vehicle is registered;
 - 5. The name and telephone number of the person to contact to arrange for inspection, if the inspection is pre-announced; and
 - 6. The signature of the applicant or applicant's designated representative.
- B. Under A.R.S. § 36-2232(A)(11), the Department shall inspect each ambulance before an initial certificate of registration is issued by the Department.
- C. Under A.R.S. § 36-2232(A)(11), the Department shall either inspect an ambulance or receive an inspection report that meets the requirements in this Article by a Department-approved inspection facility before a renewal certificate of registration is issued by the Department.
- D. An applicant shall submit the following fees:
 - 1. \$50 application filing fee for an initial certificate of registration;
 - 2. \$200 annual regulatory fee for each ground ambulance vehicle issued a certificate of registration; and
 - 3. \$50 application filing fee for the renewal of a certificate of registration.
- E. The Department shall approve or deny an application under this Section according to 9 A.A.C. 25, Article 12.

R9-25-1002. Minimum Standards for Ground Ambulance Vehicles (Authorized by A.R.S. § 36-2202(A)(5))

An applicant for a certificate of registration or certificate holder shall ensure a ground ambulance vehicle is equipped with the following:

- 1. An engine intake air cleaner that meets the ground ambulance vehicle manufacturer's engine specifications;
- 2. A brake system that meets the requirements in A.R.S. § 28-952;
- 3. A cooling system in the engine compartment that maintains the engine temperature operating range required to prevent damage to the ground ambulance vehicle engine;
- 4. A battery:
 - a. With no leaks, corrosion, or other visible defects; and
 - b. As measured by a voltage meter, capable of generating:
 - i. 12.6 volts at rest, and
 - ii. 13.2 to 14.2 volts on high idle with all electrical equipment turned on;
- 5. A wiring system in the engine compartment designed to prevent the wire from being cut by or tangled in the engine or hood;

6. Hoses, belts, and wiring with no visible defects;
7. An electrical system capable of maintaining a positive amperage charge while the ground ambulance vehicle is stationary and operating at high idle with headlights, running lights, patient compartment lights, environmental systems, and all warning devices turned on;
8. An exhaust pipe, muffler, and tailpipe under the ground ambulance vehicle and securely attached to the chassis;
9. A frame capable of supporting the gross vehicle weight of the ground ambulance vehicle;
10. A horn that meets the requirements in A.R.S. § 28-954(A);
11. A siren that meets the requirements in A.R.S. § 28-954(E);
12. A front bumper that is positioned at the forward-most part of the ground ambulance vehicle extending to the ground ambulance vehicle's outer edges;
13. A fuel cap of a type specified by the manufacturer for each fuel tank;
14. A steering system to include:
 - a. Power-steering belts free from frays, cracks, or slippage;
 - b. Power-steering that is free from leaks;
 - c. Fluid in the power-steering system that fills the reservoir between the full level and the add level indicator on the dipstick; and
 - d. Bracing extending from the center of the steering wheel to the steering wheel ring that is not cracked;
15. Front and rear shock absorbers that are free from leaks;
16. Tires on each axle that:
 - a. Are properly inflated;
 - b. Are of equal size, equal ply ratings, and equal type;
 - c. Are free of bumps, knots, or bulges;
 - d. Have no exposed ply or belting; and
 - e. Have tread groove depth equal to or more than 4/32 inch;
17. An air cooling system capable of achieving and maintaining a 20° F difference between the air intake and the cool air outlet;
18. Air cooling and heater hoses secured in all areas of the ground ambulance vehicle and chassis to prevent wear due to vibration;
19. Body free of damage or rust that interferes with the physical operation of the ground ambulance vehicle or creates a hole in the driver's compartment or the patient compartment;
20. Windshield defrosting and defogging equipment;
21. Emergency warning lights that provide 360° conspicuity;
22. At least one 5-lb. ABC dry, chemical, multi-purpose fire extinguisher in a quick release bracket with a current inspection tag;
23. A heating system capable of achieving and maintaining a temperature of not less than 68° F in the patient compartment within 30 minutes;
24. Sides of the ground ambulance vehicle insulated and sealed to prevent dust, dirt, water, carbon monoxide, and gas fumes from entering the interior of the patient compartment and to reduce noise;
25. Interior patient compartment wall and floor coverings that are:
 - a. In good repair and capable of being disinfected, and
 - b. Maintained in a sanitary manner;
26. Padding over exit areas from the patient compartment and over sharp edges in the patient compartment;
27. Secured interior equipment and other objects;
28. When present, hangers or supports for equipment mounted not to protrude more than 2 inches when not in use;
29. Functional lamps and signals, including:
 - a. Bright and dim headlamps,

- b. Brake lamps,
 - c. Parking lamps,
 - d. Backup lamps,
 - e. Tail lamps,
 - f. Turn signal lamps,
 - g. Side marker lamps,
 - h. Hazard lamps,
 - i. Patient loading door lamps and side spot lamps,
 - j. Spot lamp in the driver's compartment and within reach of the ambulance attendant, and
 - k. Patient compartment interior lamps;
30. Side-mounted rear vision mirrors and wide vision mirror mounted on, or attached to, the side-mounted rear vision mirrors;
 31. A patient loading door that permits the safe loading and unloading of a patient occupying a stretcher in a supine position;
 32. At least two means of egress from the patient compartment to the outside through a window or door;
 33. Functional open door securing devices on a patient loading door;
 34. Patient compartment upholstery free of cuts or tears and capable of being disinfected;
 35. A seat belt installed for each seat in the driver's compartment;
 36. Belts or devices installed on a stretcher to be used to secure a patient;
 37. A seat belt installed for each seat in the patient compartment;
 38. A crash stable side or center mounting fastener of the quick release type to secure a stretcher to a ground ambulance vehicle;
 39. Windshield and windows free of obstruction;
 40. A windshield free from unrepaired starred cracks and line cracks that extend more than 1 inch from the bottom and sides of the windshield or that extend more than 2 inches from the top of the windshield;
 41. A windshield-washer system that applies enough cleaning solution to clear the windshield;
 42. Operable windshield wipers with a minimum of two speeds;
 43. Functional hood latch for the engine compartment;
 44. Fuel system with fuel tanks and lines that meets manufacturer's specifications;
 45. Suspension system that meets the ground ambulance vehicle manufacturer's specifications;
 46. Instrument panel that meets the ground ambulance vehicle manufacturer's specifications; and
 47. Wheels that meet and are mounted according to manufacturer's specifications.

R9-25-1003. Minimum Equipment and Supplies for Ground Ambulance Vehicles (Authorized by A.R.S. § 36-2202(A)(5))

- A. A ground ambulance vehicle used for either BLS or ALS level of service shall contain the following operational equipment and supplies:
 1. A portable and a fixed suction apparatus;
 2. Wide-bore tubing, a rigid pharyngeal curved suction tip, and a flexible suction catheter in the following French sizes:
 - a. Two in 6, 8, or 10; and
 - b. Two in 12, 14, or 16;
 3. One fixed oxygen cylinder or equivalent with a minimum capacity of 106 cubic feet, a minimum pressure of 500 p.s.i., and a variable flow regulator;
 4. One portable oxygen cylinder with a minimum capacity of 13 cubic feet, a minimum pressure of 500 p.s.i., and a variable flow regulator;
 5. Oxygen administration equipment including: tubing, two adult-size and two pediatric-size non-rebreather masks, and two adult-size and two pediatric-size nasal cannula;

6. One adult-size, one child-size, one infant-size, and one neonate-size hand-operated, disposable, self-expanding bag-valve with one of each size bag-valve mask;
7. Nasal airways in the following French sizes:
 - a. One in 16, 18, 20, 22, or 24; and
 - b. One in 26, 28, 30, 32, or 34;
8. Two adult-size, two child-size, and two infant-size oropharyngeal airways;
9. Two large-size, two medium-size, and two small-size cervical immobilization devices;
10. Two small-size, two medium-size, and two large size upper extremities splints;
11. Two small-size, two medium-size, and two large size lower extremities splints;
12. One child-size and one adult-size lower extremity traction splints;
13. Two full-length spine boards;
14. Supplies to secure a patient to a spine board;
15. One cervical-thoracic spinal immobilization device for extrication;
16. Two sterile burn sheets;
17. Two triangular bandages;
18. Three sterile multi-trauma dressings, 10" x 30" or larger;
19. Fifty non-sterile 4" x 4" gauze sponges;
20. Ten non-sterile soft roller bandages, 4" or larger;
21. Four sterile occlusive dressings, 3" x 8" or larger;
22. Two 2" or 3" adhesive tape rolls;
23. Containers for biohazardous medical waste that comply with requirements in 18 A.A.C. 13, Article 14;
24. A sterile obstetrical kit containing towels, 4" x 4" dressing, scissors, bulb suction, and clamps or tape for cord;
25. One blood glucose testing kit;
26. A meconium aspirator adapter;
27. A length/weight-based pediatric reference guide to determine the appropriate size of medical equipment and drug dosing;
28. A pulse oximeter with both pediatric and adult probes;
29. One child-size, one adult-size, and one large adult-size sphygmomanometer;
30. One stethoscope;
31. One heavy duty scissors capable of cutting clothing, belts, or boots;
32. Two blankets;
33. One thermal absorbent blanket with head cover or blanket of other appropriate heat-reflective material;
34. Two sheets;
35. Body substance isolation equipment, including:
 - a. Two pairs of non-sterile disposable gloves;
 - b. Two gowns;
 - c. Two masks that are at least as protective as a National Institute for Occupational Safety and Health-approved N-95 respirator, which may be of universal size;
 - d. Two pairs of shoe coverings; and
 - e. Two sets of protective eye wear;
36. At least three pairs of non-latex gloves; and
37. A wheeled, multi-level stretcher that is:
 - a. Suitable for supporting a patient at each level,
 - b. At least 69 inches long and 20 inches wide,
 - c. Rated for use with a patient weighing up to or more than 350 pounds,
 - d. Adjustable to allow a patient to recline and to elevate the patient's head and upper torso to an angle at least 70° from the horizontal plane,
 - e. Equipped with a mattress that has a protective cover,

- f. Equipped with at least two attached straps to secure a patient during transport, and
 - g. Equipped to secure the stretcher to the interior of the vehicle during transport using the fastener required under R9-25-1002(38).
- B.** In addition to the equipment and supplies in subsection (A), a ground ambulance vehicle equipped to provide BLS shall contain at least:
- 1. The minimum supply of agents required in a table of agents, established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov/ems-regulatory-references, that an administrative medical director may authorize for an EMT;
 - 2. The capability of providing automated external defibrillation;
 - 3. Two 3 mL syringes; and
 - 4. Two 10-12 mL syringes.
- C.** In addition to the equipment and supplies in subsection (A), a ground ambulance vehicle equipped to provide ALS shall contain at least the minimum supply of agents required in a table of agents, established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov/ems-regulatory-references, that an administrative medical director may authorize for the highest level of service to be provided by the ambulance's crew and at least the following:
- 1. Four intravenous solution administration sets capable of delivering 10 drops per cc;
 - 2. Four intravenous solution administration sets capable of delivering 60 drops per cc;
 - 3. Intravenous catheters in:
 - a. Three different sizes from 14 gauge to 20 gauge, and
 - b. Either 22 or 24 gauge;
 - 4. One child-size and one adult-size intraosseous needle;
 - 5. Venous tourniquet;
 - 6. Two endotracheal tubes in each of the following sizes: 2.5 mm, 3.0 mm, 3.5 mm, 4.0 mm, 4.5 mm, 5.0 mm, 5.5 mm, 6.0 mm, 7.0 mm, 8.0 mm, and 9.0 mm;
 - 7. One pediatric-size and one adult-size stylette for endotracheal tubes;
 - 8. End tidal CO2 monitoring/capnography equipment with capability for pediatric and adult patients;
 - 9. One laryngoscope with blades in sizes 0-4, straight or curved or both;
 - 10. One pediatric-size and one adult-size Magill forceps;
 - 11. One scalpel;
 - 12. One portable, battery-operated cardiac monitor-defibrillator with strip chart recorder and adult and pediatric EKG electrodes and defibrillation capabilities;
 - 13. Electrocardiogram leads;
 - 14. The following syringes:
 - a. Two 1 mL tuberculin,
 - b. Four 3 mL,
 - c. Four 5 mL,
 - d. Four 10-12 mL,
 - e. Two 20 mL, and
 - f. Two 50-60 mL;
 - 15. Three 5 micron filter needles; and
 - 16. Assorted sizes of non-filter needles.
- D.** A ground ambulance vehicle shall be equipped to provide, and capable of providing, voice communication between:
- 1. The ambulance attendant and the dispatch center;
 - 2. The ambulance attendant and the ground ambulance service's assigned medical direction authority, if any; and
 - 3. The ambulance attendant in the patient compartment and the ground ambulance service's assigned medical direction authority, if any.

R9-25-1004. Minimum Staffing Requirements for Ground Ambulance Vehicles (Authorized by A.R.S. §§ 36-2201(4), 36-2202(A)(5))

When transporting a patient, a ground ambulance service shall staff a ground ambulance vehicle according to A.R.S. § 36-2202(J).

R9-25-1005. Ground Ambulance Vehicle Inspection; Major and Minor Defects (A.R.S. §§ 36-2202(A)(5), 36-2212, 36-2232, 36-2234)

- A. A certificate holder shall make the ground ambulance vehicle, equipment, and supplies available for inspection at the request of the Director or the Director’s authorized representative.
- B. If inspected by the Department, a certificate holder shall allow the Director or the Director’s authorized representative to ride in or operate the ground ambulance vehicle being inspected.
- C. A certificate holder may request the Department to inspect all of the certificate holder’s ground ambulance vehicles at the same date and location.
- D. A Department-approved inspection facility may inspect a ground ambulance vehicle under A.R.S. § 36-2232(A)(11).
- E. The Department classifies defects on a ground ambulance vehicle as major or minor as follows:

INSPECTION ITEM	MAJOR DEFECT	MINOR DEFECT
LAMPS:		
Emergency warning lights	Lack of 360° of conspicuity	Cracked, broken, or missing lens Inoperative lamps
Back-up lamps		Inoperative Cracked, broken, or missing lens
Brake lamps	Both inoperative	1 inoperative
Hazard lamps		Inoperative
Head lamps	Inoperative	High beam inoperative Low beam inoperative Inoperative dimmer switch
Loading lamps		Inoperative Cracked, broken, or missing lens
Parking lamps		Inoperative
Patient Compartment interior lamps	All lamps inoperative	Inoperative individual lamps Missing lens
Side marker lamps		Inoperative Cracked, broken, or missing lens
Spot lamp in driver’s compartment		Inoperative
Tail lamps	Both inoperative	1 inoperative Cracked, broken, or missing lens
Turn signal lamps		Any turn signal lamp inoperative Cracked, broken, or missing lens
MECHANICAL, STRUCTURAL, ELECTRICAL:		
Bumpers		Loose or missing bumper
Defroster		Inoperative Ventilation system openings partially blocked
Electrical system	Does not comply with R9-25-1002(6)	

Engine compartment		Inoperative hood latch Deterioration of hoses, belts, or wiring Deterioration of battery hold-down clamps Corrosive acid buildup on battery terminals Incapable of generating voltage in compliance with R9-25-1002(4)(b)
Engine compartment wiring system		Does not comply with R9-25-1002(5)
Engine cooling system	Does not comply with R9-25-1002(3)	Leaks in system
Engine intake air cleaner		Does not comply with R9-25-1002(1)
Exhaust	Exhaust fumes in the patient or driver compartment	Exhaust pipe brackets not securely attached to the chassis and tailpipe End of tailpipe pinched or bent
Frame	Cracks in frame	
Fuel system	Fuel tank not mounted according to manufacturer's specifications Fuel tank brackets cracked or broken Leaking fuel tanks or fuel lines Fuel caps missing or of a type not specified by the manufacturer	
Ground ambulance vehicle body	Damage or rust to the exterior of the ground ambulance vehicle, which interferes with the operation of the ground ambulance vehicle Damage resulting in a hole in the driver's compartment or the patient compartment Holes that may allow exhaust or dust to enter the patient compartment Bolts attaching body to chassis loose, broken, or missing	Damage resulting in cuts or rips to the exterior of the ground ambulance vehicle
Heating and air conditioning systems		Unsecured hoses Does not maintain minimum temperature required in R9-25-1002(23) and 1002(17)
Horn		Inoperative
Parking brake		Inoperative
Siren	Inoperative	
Steering	Steering wheel bracing cracked Inoperative	Power steering belts slipping Power steering belts cracked or frayed Fluid leaks Fluid does not fill the reservoir between the full level and the add level indicator on the dipstick
Suspension	Broken suspension parts U-bolts loose or missing	Bent suspension parts Leaking shock absorbers Cracks or breaks in shock absorber mounting brackets
Vehicle brakes	Inoperative	Fluid leaks
INTERIOR:		
Communication equipment	Lack of operative communication equipment	Inoperative communication equipment in the patient compartment
Edges		Presence of exposed sharp edges
Equipment	Inability to secure oxygen tanks	Inability to secure other equipment
Fire extinguisher	Absent	Not at full charge Expired inspection tag

Hangers		Supports or hangers protruding more than 2" when not in use
Instrument panel		Inoperative gauges, switches, or illumination
Padding		Missing padding over exits in the patient compartment
Patient compartment	Visible blood, body fluids, or tissue	Unrepaired cuts or holes in seats Missing pieces of floor covering
Seat belts and securing belts	Absence of seat belt or inoperative seat belt in the driver's compartment More than one inoperative seat belt in the patient compartment Absence of securing belts on a stretcher	Frayed seat belt or securing belt material One inoperative seat belt in the patient compartment
Stretcher fastener	Does not comply with R9-25-1002(36)	
EXTERIOR:		
Patient compartment doors	Completely or partially missing window panel	Inoperative open door securing devices Cracked window panels
Marking		Missing company identification Incorrect size or location
Mirrors	Exterior rear vision or wide vision mirrors missing	Cracked mirror glass Loose mounting bracket bolts or screws Broken mirrors Loose or broken mounting brackets Missing mounting bracket bolts or screws
Tires	Tires on each axle are not of equal size, equal ply ratings, and equal type Bumps, knots, or bulges on any tire Exposed ply or belting on any tire Flat tire on any wheel	Tread groove depth less than 4/32" measured in a tread groove on any tire
Wheels	Loose or missing lug nuts Broken lugs Cracked or bent rims	
Windows		Placement of nontransparent materials which obstruct view Cracked or broken
Windshield	Windshield that is obstructed Placement of nontransparent materials which obstruct view	Unrepaired starred cracks or line cracks extending more than 1 inch from the bottom or side of the windshield Unrepaired starred cracks or line cracks extending more than 2 inches from the top of the windshield
Windshield- washer system		Does not comply with R9-25-1002(39)
Windshield wipers	Inoperative wiper on driver's side	Inoperative speed control Split or cracked wiper blade Inoperative wiper on passenger's side

F. If the Department determines that there is a major defect on the ground ambulance vehicle after inspection, the certificate holder shall take the ground ambulance vehicle out-of-service until the defect is corrected.

G. If the Department finds a minor defect on the ground ambulance vehicle after inspection, the ground ambulance vehicle may be operated to transport patients for up to 15 days until the minor defect is corrected.

1. The Department may grant an extension of time to repair the minor defect upon a written request from the certificate holder detailing the reasons for the need of an extension of time.

2. If the minor defect is not repaired within the time prescribed by the Department, and an extension has not been granted, the certificate holder shall take the ground ambulance vehicle out-of-service until the minor defect is corrected.
- H. Within 15 days of the date of repair of the major or minor defect, the certificate holder shall submit written notice of the repair to the Department.

R9-25-1006. Ground Ambulance Vehicle Identification (A.R.S. §§ 36-2212, 36-2232)

- A. A ground ambulance vehicle shall be marked on its sides with the certificate of registration applicant's legal business or corporate name with letters not less than 6 inches in height.
- B. A ground ambulance vehicle marked with a level of ground ambulance service shall be equipped and staffed to provide the level of ground ambulance service identified while in service.

ARTICLE 11. GROUND AMBULANCE SERVICE RATES AND CHARGES; CONTRACTS

R9-25-1101. Application for Establishment of Initial General Public Rates (A.R.S. §§ 36-2232, 36-2239)

- A. An applicant for a certificate of necessity or a certificate holder applying for initial general public rates shall submit an application packet to the Department that includes:
 1. The applicant's name;
 2. The requested general public rates;
 3. A copy of the applicant's most recent financial statements or an Ambulance Revenue and Cost Report;
 4. For a consecutive 12-month period:
 - a. A projected income statement; and
 - b. A projected cash-flow statement;
 5. A list of all purchase agreements or lease agreements for real estate, ground ambulance vehicles, and equipment exceeding \$5,000 used in connection with the ground ambulance service, that includes the monetary amount and duration of each agreement;
 6. The identification of:
 - a. Each of the applicant's affiliations, such as a parent company or subsidiary owned or operated by the applicant; and
 - b. The methodology and calculations used in allocating costs among the applicant and government entities or profit or not-for-profit businesses;
 7. A copy of the applicant's contract with each federal or tribal entity for ground ambulance service, if applicable;
 8. Other documents, exhibits, or statements that may assist the Department in setting the general public rates;
 9. An attestation signed by the applicant that the information and documents provided by the applicant are true and correct; and
 10. Any other information or documents requested by the Director to clarify or complete the application.
- B. The Department shall approve or deny an application under this Section according to 9 A.A.C. 25, Article 12.

R9-25-1102. Application for Adjustment of General Public Rates (A.R.S. §§ 36-2234, 36-2239)

- A. A certificate of necessity holder applying for an adjustment of general public rates not exceeding the monetary amount calculated according to A.R.S. § 36-2234(E) shall submit an application form to the Department that includes:

1. The name of the applicant;
 2. A statement that the applicant is making the request according to A.R.S. § 36-2234(E);
 3. A statement that the applicant has not applied for an adjustment to its general public rates within the last six months;
 4. The effective date of the proposed general public rate adjustment; and
 5. An attestation signed by the applicant that the information and documents provided by the applicant are true and correct.
- B.** An applicant requesting an adjustment of general public rates exceeding the monetary amount calculated according to A.R.S. § 36-2234(E) shall submit an application packet to the Department that includes:
1. The name of the applicant;
 2. A statement that the applicant is making the request according to A.R.S. § 36-2234(A);
 3. The reason for the general public rate adjustment request;
 4. A statement that the applicant has not applied for an adjustment to its general public rates within the last six months;
 5. The effective date of the proposed general public rate adjustment;
 6. A copy of the applicant's most recent financial statements;
 7. A copy of the Ambulance Revenue and Cost Report;
 8. For a consecutive 12-month period:
 - a. A projected income statement; and
 - b. A projected cash-flow statement;
 9. A list of all purchase agreements or lease agreements for real estate, ground ambulance vehicle, and equipment exceeding \$5,000 used in connection with the ground ambulance service, that includes the monetary amount and duration of each agreement;
 10. The identification of:
 - a. Each of the applicant's affiliations, such as a parent company or subsidiary owned or operated by the applicant; and
 - b. The methodology and calculations used in allocating costs among the applicant and government entities or profit or not for profit businesses;
 11. A copy of the applicant's contract with each federal or tribal entity for a ground ambulance service, if applicable;
 12. Other documents, exhibits, or statements that may assist the Department in setting the general public rates;
 13. An attestation signed by the applicant that the information and documents provided by the applicant are true and correct; and
 14. Any other information or documents requested by the Director to clarify or complete the application.
- C.** The Department shall approve or deny an application under this Section according to 9 A.A.C. 25, Article 12.

R9-25-1103. Application for a Contract Rate or Range of Rates Less than General Public Rates (A.R.S. §§ 36-2234(G) and (I), 36-2239)

- A.** Before providing interfacility transports or convalescent transports, a certificate holder shall apply to the Department for approval of a contract rate or range of contract rates under A.R.S. § 36-2234(G).
1. For a contract rate or range of rates under A.R.S. § 36-2234(G), the certificate holder shall submit an application form to the Department that contains:
 - a. The name of the certificate holder;
 - b. A statement that the certificate holder is making the request under A.R.S. § 36-2234(G);
 - c. The contract rate or range of rates being requested; and

- d. Information demonstrating the cost and economics of providing the transports for the requested contract rate or range of rates.
- 2. For a contract rate or range of rates under A.R.S. § 36-2234(I), the certificate holder shall submit the information required in R9-25-1102(B)(1) and (B)(6) through (B)(14).
- B. The Department shall approve or deny an application under this Section according to 9 A.A.C. 25, Article 12.

R9-25-1104. Ground Ambulance Service Contracts (A.R.S. §§ 36-2232, 36-2234(K))

- A. Before implementing a ground ambulance service contract, a certificate holder shall submit to the Department for approval a copy of the contract with a cover letter that indicates the total number of pages in the contract. The contract shall:
 - 1. Include the certificate holder's legal name and any other name listed on the certificate holder's initial application required in R9-25-902(A)(1)(a);
 - 2. List the contract rate or range of rates approved by the Director according to R9-25-1101, R9-25-1102, or R9-25-1103;
 - 3. Comply with A.R.S. §§ 36-2201 through 36-2246 and 9 A.A.C. 25; and
 - 4. Not preclude use of the 9-1-1 system or a similarly designated emergency telephone number.
- B. The Department shall approve or deny an application under this Section according to 9 A.A.C. 25, Article 12.

R9-25-1105. Application for Provision of Subscription Service or to Establish a Subscription Service Rate (A.R.S. § 36-2232(A)(1))

- A. A certificate holder applying to provide subscription service, establish a subscription service rate, or request approval of a subscription service contract shall submit an application packet to the Department that includes:
 - 1. The following information:
 - a. The number of estimated subscription service contracts and documents supporting the estimate, such as a survey of the service area;
 - b. An estimate of the number of annual subscription service transports for the service area;
 - c. The proposed subscription service rate;
 - d. An estimate of the cost of providing subscription service to the service area; and
 - e. Any other information or documents that the certificate holder believes may assist the Department in setting a subscription service rate; and
 - 2. A copy of the proposed subscription service contract.
- B. The Department shall approve or deny a subscription service rate under this Section according to 9 A.A.C. 25, Article 12.

R9-25-1106. Rate of Return Setting Considerations (A.R.S. §§ 36-2232, 36-2239)

- A. In determining the rate of return on gross revenue in A.R.S. § 36-2239(I)(4), the Director shall consider a ground ambulance service's:
 - 1. Direct and indirect costs for operating the ground ambulance service within its service area;
 - 2. Balance sheet;
 - 3. Income statement;
 - 4. Cash flow statement;
 - 5. Ratio between variable and fixed costs on the financial statements;
 - 6. Method of indirect costs allocation to specific cost-center areas;
 - 7. Return on equity;
 - 8. Reimbursable and non-reimbursable charges;
 - 9. Type of business entity;
 - 10. Monetary amount and type of debt financing;

11. Replacement and expansion costs;
 12. Number of calls, transports, and billable miles;
 13. Costs associated with rules, inspections, and audits;
 14. Substantiated prior reported losses;
 15. Medicare and AHCCCS settlements; and
 16. Any other information or documents needed by the Director to clarify incomplete or ambiguous information or documents.
- B.** In determining the rate of return on gross revenue in A.R.S. § 36-2239(I)(4), the Director shall not consider:
1. Depreciation of the portion of ground ambulance vehicles and equipment obtained through Department funding,
 2. The certificate holder's travel and entertainment expenses that do not directly relate to providing the ground ambulance service,
 3. The monetary value of any goodwill accumulated by the certificate holder,
 4. Any penalties or fines imposed on the certificate holder by a court or government agency, and
 5. Any financial contributions received by the certificate holder.
- C.** In determining just, reasonable, and sufficient rates in A.R.S. § 36-2232(A)(1) the director shall establish rates to provide for a rate of return that is at least 7% of gross revenue, calculated using the accrual method of accounting according to generally accepted accounting principles, unless the certificate holder requests a lower rate of return.
- D.** Rate of return on gross revenue is calculated by dividing Ambulance Revenue and Cost Report Exhibit A or Exhibit B net income or loss by gross revenue.

R9-25-1107. Rate Calculation Factors (A.R.S. § 36-2232)

- A.** When evaluating a proposed mileage rate, the Department shall consider the following factors:
1. The cost of licensure and registration of each ground ambulance vehicle;
 2. The cost of fuel;
 3. The cost of ground ambulance vehicle maintenance;
 4. The cost of ground ambulance vehicle repair;
 5. The cost of tires;
 6. The cost of ground ambulance vehicle insurance;
 7. The cost of mechanic wages, benefits, and payroll taxes;
 8. The cost of loan interest related to the ground ambulance vehicles;
 9. The cost of the weighted allocation of overhead;
 10. The cost of ground ambulance vehicle depreciation;
 11. The cost of reserves for replacement of ground ambulance vehicles and equipment; and
 12. Mileage reimbursement as established by Medicare guidelines for ground ambulance service.
- B.** When evaluating a proposed BLS base rate, the Department shall consider the costs associated with providing EMS and transport.
- C.** When evaluating a proposed ALS base rate, the Department shall consider the factors in subsection (B) and the additional costs of ALS ambulance equipment and ALS personnel.
- D.** In evaluating rates, the Director shall make adjustments to a certificate holder's rates to maximize Medicare reimbursements.
- E.** The Department shall determine the standby waiting rate by dividing the BLS base rate by 4.

R9-25-1108. Implementation of Rates and Charges (A.R.S. §§ 36-2232, 36-2239)

- A.** A certificate holder shall assess rates and charges as follows:
1. When calculating a rate or charge, the certificate holder shall:
 - a. Omit fractions of less than 1/2 of 1 cent; or
 - b. Increase to the next whole cent, fractions of 1/2 of 1 cent or greater.

2. The certificate holder shall calculate the number of miles for a transport by using:
 - a. The ground ambulance vehicle's odometer reading; or
 - b. A regional map.
 3. The certificate holder shall calculate the reimbursement amount for mileage of a transport by multiplying the number of miles for the transport by the mileage rate.
 4. When transporting two or more patients in the same ground ambulance vehicle, the certificate holder shall assess each patient:
 - a. Fifty percent of the mileage rate and one hundred percent of the ALS or BLS base rate; and
 - b. One hundred percent of:
 - i. The charge for each disposable supply, medical supply, medication, and oxygen-related cost used on the patient; and
 - ii. Waiting time assessed according to subsection (C).
 5. When agreed upon by prior arrangement to transport a patient to one destination and return to the point of pick-up or to one destination and then to a subsequent destination, assess only the ALS or BLS base rate, mileage rate, and standby waiting rate for the transport.
- B.** When a certificate holder transfers a patient to an air ambulance, the certificate holder shall assess the patient the rates and charges for EMS and transport provided to the patient before the transfer.
- C.** A certificate holder shall assess a standby waiting rate in quarter-hour increments, except for:
1. The first 15 minutes after arrival to load the patient at the point of pick-up;
 2. The time, exceeding the first 15 minutes, required by ambulance attendants to provide necessary medical treatment and stabilization of the patient at the point of pick-up; and
 3. The first 15 minutes to unload the patient at the point of destination.
- D.** When a certificate holder responds to a request outside the certificate holder's service area, the certificate holder shall assess its own rates and charges for EMS or transport provided to the patient.
- E.** When the Department or the certificate holder determines that a refund of a rate or a charge is required, the certificate holder shall refund the rate or charge within 90 days from the date of the determination.

R9-25-1109. Charges (A.R.S. §§ 36-2232, 36-2239(D))

- A.** A certificate holder that charges patients for disposable supplies, medical supplies, medications, and oxygen-related costs shall submit to the Department a list of the items and the proposed charges. The list shall include a non-retroactive effective date.
- B.** A certificate holder shall submit to the Department a new list each time the certificate holder proposes a change in the items or the amount charged. The list shall contain the information required in subsection (A), including a non-retroactive effective date.

R9-25-1110. Invoices (A.R.S. §§ 36-2234, 36-2239)

- A.** Each invoice for rates and charges shall contain the following:
1. The patient's name;
 2. The certificate holder's name, address, and telephone number;
 3. The date of service;
 4. An itemized list of the rates and charges assessed;
 5. The total monetary amount owed the certificate holder; and
 6. The payment due date.
- B.** Any subsequent invoice to the same patient for the same EMS or transport shall contain all the information in subsection (A) except the information in subsection (A)(4).
- C.** Charges may be combined into one line item if the supplies are used for a specific purpose and the name of the combined item is included in the certificate holder's disposable medical supply listing provided to the Department under R9-25-1109.

- D.** A certificate holder may combine rates and charges into one line item if required by a third-party payor.

Statutory Authority for Rules in 9 A.A.C. 25, Articles 9, 10, and 11

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 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. If 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 not 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.

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 fundraising 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 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.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

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 preserving or storing 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 preparing 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 36-183.02. 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.

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. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. 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.

36-2202. Duties of the director; qualifications of medical director

A. The director shall:

1. Appoint a medical director of the emergency medical services and trauma system.
2. Adopt standards and criteria for the denial or granting of certification and recertification of emergency medical care technicians. These standards shall allow the department to certify qualified emergency medical care technicians who have completed statewide standardized training required under section 36-2204, paragraph 1 and a standardized certification test required under section 36-2204, paragraph 2 or who hold valid certification with a national certification organization. Before the director may consider approving a statewide standardized training or a standardized certification test, or both, each of these must first be recommended by the medical direction commission and the emergency medical services council to ensure that the standardized training content is consistent with national education standards and that the standardized certification tests examines comparable material to that examined in the tests of a national certification organization.
3. Adopt standards and criteria that pertain to the quality of emergency care pursuant to section 36-2204.
4. Adopt rules necessary to carry out this chapter. Each rule shall identify all sections and subsections of this chapter under which the rule was formulated.
5. Adopt reasonable medical equipment, supply, staffing and safety standards, criteria and procedures for issuance of a certificate of registration to operate an ambulance.
6. Maintain a state system for recertifying emergency medical care technicians, except as otherwise provided by section 36-2202.01, that is independent from any national certification organization recertification process. This system shall allow emergency medical care technicians to choose to be recertified under the state or the national certification organization recertification system subject to subsection H of this section.

B. Emergency medical technicians who choose the state recertification process shall recertify in one of the following ways:

1. Successfully completing an emergency medical technician refresher course approved by the department.
2. Successfully completing an emergency medical technician challenge course approved by the department.
3. For emergency medical care technicians who are currently certified at the emergency medical technician level by the department, attesting on a form provided by the department that the applicant holds a valid and current cardiopulmonary resuscitation certification, has and will maintain documented proof of a minimum of twenty-four hours of continuing medical education within the last two years consistent with department rules and has functioned in the capacity of an emergency medical technician for at least two hundred forty hours during the last two years.

C. After consultation with the emergency medical services council the director may authorize pilot programs designed to improve the safety and efficiency of ambulance inspections for governmental or quasi-governmental entities that provide emergency medical services in this state.

D. The rules, standards and criteria adopted by the director pursuant to subsection A, paragraphs 2, 3, 4 and 5 of this section shall be adopted in accordance with title 41, chapter 6, except that the director may adopt on an emergency basis pursuant to section 41-1026 rules relating to the regulation of ambulance services in this state necessary to protect the public peace, health and safety in advance of adopting rules, standards and criteria as otherwise provided by this subsection.

E. The director may waive the requirement for compliance with a protocol adopted pursuant to section 36-2205 if the director determines that the techniques, drug formularies or training makes the protocol inconsistent with contemporary medical practices.

F. The director may suspend a protocol adopted pursuant to section 36-2205 if the director does all of the following:

1. Determines that the rule is not in the public's best interest.
2. Initiates procedures pursuant to title 41, chapter 6 to repeal the rule.
3. Notifies all interested parties in writing of the director's action and the reasons for that action. Parties interested in receiving notification shall submit a written request to the director.

G. To be eligible for appointment as the medical director of the emergency medical services and trauma system, the person shall be qualified in emergency medicine and shall be licensed as a physician in one of the states of the United States.

H. Applicants for certification shall apply to the director for certification. Emergency medical care technicians shall apply for recertification to the director every two years. The director may extend the expiration date of an emergency medical care technician's certificate for thirty days. The department shall establish a fee for this extension by rule. Emergency medical care technicians shall pass an examination administered by the department as a condition for recertification only if required to do so by the advanced life support base hospital's medical director or the emergency medical care technician's medical director.

I. The medical director of the emergency medical services and trauma system is exempt from title 41, chapter 4, articles 5 and 6 and is entitled to receive compensation pursuant to section 38-611, subsection A.

J. The standards, criteria and procedures adopted by the director pursuant to subsection A, paragraph 5 of this section shall require that ambulance services serving a rural or wilderness certificate of necessity area with a population of less than ten thousand persons according to the most recent United States decennial census have at least one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a) and one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (b) staffing an ambulance while transporting a patient and that ambulance services serving a population of ten thousand persons or more according to the most recent United States decennial census have at least one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a) and one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a), (c), (d) or (e) staffing an ambulance while transporting a patient.

K. If the department determines there is not a qualified administrative medical director, the department shall ensure the provision of administrative medical direction for an emergency medical technician if the emergency medical technician meets all of the following criteria:

1. Is employed by a nonprofit or governmental provider employing less than twelve full-time emergency medical technicians.
2. Stipulates to the inability to secure a physician who is willing to provide administrative medical direction.
3. Stipulates that the provider agency does not provide administrative medical direction for its employees.

36-2204. Medical control

The medical director of the statewide emergency medical services and trauma system, the emergency medical services council and the medical direction commission shall recommend to the director the following standards and criteria that pertain to the quality of emergency patient care:

1. Statewide standardized training, certification and recertification standards for all classifications of emergency medical care technicians.
2. A standardized and validated testing procedure for all classifications of emergency medical care technicians.
3. Medical standards for certification and recertification of training programs for all classifications of emergency medical care technicians.
4. Standardized continuing education criteria for all classifications of emergency medical care technicians.

5. Medical standards for certification and recertification of certified emergency receiving facilities and advanced life support base hospitals and approval of physicians providing medical control or medical direction for any classification of emergency medical care technicians who are required to be under medical control or medical direction.
6. Standards and mechanisms for monitoring and ongoing evaluation of performance levels of all classifications of emergency medical care technicians, emergency receiving facilities and advanced life support base hospitals and approval of physicians providing medical control or medical direction for any classification of emergency medical care technicians who are required to be under medical control or medical direction.
7. Objective criteria and mechanisms for decertification of all classifications of emergency medical care technicians, emergency receiving facilities and advanced life support base hospitals and for disapproval of physicians providing medical control or medical direction for any classification of emergency care technicians who are required to be under medical control or medical direction.
8. Medical standards for nonphysician prehospital treatment and prehospital triage of patients requiring emergency medical services.
9. Standards for emergency medical dispatcher training, including prearrival instructions. For the purposes of this paragraph, "emergency medical dispatch" means the receipt of calls requesting emergency medical services and the response of appropriate resources to the appropriate location.
10. Standards for a quality assurance process for components of the statewide emergency medical services and trauma system, including standards for maintaining the confidentiality of the information considered in the course of quality assurance and the records of the quality assurance activities pursuant to section 36-2403.
11. Standards for ambulance service and medical transportation that give consideration to the differences between urban, rural and wilderness areas.
12. Standards to allow an ambulance to transport a patient to a health care institution that is licensed as a special hospital and that is physically connected to an emergency receiving facility.

36-2212. Certificate of registration to operate an ambulance; termination on change in ownership; fees; exemption

- A. A person shall not operate an ambulance in this state unless the ambulance has a certificate of registration and complies with this article and the rules, standards and criteria adopted pursuant to this article.
- B. A person may obtain a certificate of registration to operate an ambulance by submitting an application on a form prescribed by the director and by demonstrating to the director's satisfaction that the applicant is in compliance with this article and all rules, standards and criteria adopted by the director for the operation of an ambulance.
- C. A certificate of registration issued under this section terminates upon any change of ownership or control of the ambulance. Following any change of ownership, the new owner of an ambulance shall apply for and receive a new certificate of registration from the director before the ambulance may again be operated in this state. This subsection does not apply if an ambulance service borrows, leases, rents or otherwise obtains a registered ambulance from another ambulance service to temporarily replace an inoperable ambulance.
- D. The department shall issue a certificate of registration to a person who complies with the requirements of this article and who pays an initial registration fee. A certificate of registration is valid for one year. However, an ambulance service may request that the department issue an initial certificate of registration that expires before the end of one year in order for the department to conduct an annual inspection of all of the ambulance service's ambulances at one time. A person may renew a certificate of registration by complying with the requirements of this article and by paying a renewal fee prescribed by the director. The fee for initial registration and registration renewal shall not exceed fifty dollars for each ambulance. The department shall base these fees on an amount that approximates the per vehicle costs incurred by the department to administer this chapter. The director shall deposit, pursuant to sections 35-146 and 35-147, fees collected

under this subsection in the state general fund. The department shall not charge a registration fee for an ambulance to an ambulance service that operates an ambulance or ambulances only as a volunteer not-for-profit service.

36-2232. Director: powers and duties; regulation of ambulance services; inspections; response time compliance

A. The director shall adopt rules to regulate the operation of ambulances and ambulance services in this state. Each rule shall identify all sections and subsections of this chapter under which the rule was formulated. The rules shall provide for the department to do the following:

1. Determine, fix, alter and regulate just, reasonable and sufficient rates and charges for the provision of ambulances, including rates and charges for advanced life support service, basic life support service, patient loaded mileage, standby waiting, subscription service contracts and other contracts for services related to the provision of ambulances. The director may establish a rate and charge structure as defined by federal medicare guidelines for ambulance services. The director shall inform all ambulance services of the procedures and methodology used to determine ambulance rates or charges.
2. Regulate operating and response times of ambulances to meet the needs of the public and to ensure adequate service. The rules adopted by the director for certificated ambulance service response times shall include uniform standards for urban, suburban, rural and wilderness geographic areas within the certificate of necessity based on, at a minimum, population density, geographic and medical considerations.
3. Determine, fix, alter and regulate bases of operation. The director may issue a certificate of necessity to more than one ambulance service within any base of operation. For the purposes of this paragraph, "base of operation" means a service area granted under a certificate of necessity.
4. Issue, amend, transfer, suspend or revoke certificates of necessity under terms consistent with this article.
5. Prescribe a uniform system of accounts to be used by ambulance services that conforms to standard accounting forms and principles for the ambulance industry and generally accepted accounting principles.
6. Require the filing of an annual financial report and other data. These rules shall require an ambulance service to file the report with the department not later than one hundred eighty days after the completion of its annual accounting period.
7. Regulate ambulance services in all matters affecting services to the public to the end that this article may be fully carried out.
8. Prescribe bonding requirements, if any, for ambulance services granted authority to provide any type of subscription service.
9. Offer technical assistance to ambulance services to maximize a healthy and viable business climate for the provision of ambulances.
10. Offer technical assistance to ambulance services in order to obtain or to amend a certificate of necessity.
11. Inspect, at a maximum of twelve month intervals, each ambulance registered pursuant to section 36-2212 to ensure that the vehicle is operational and safe and that all required medical equipment is operational. At the request of the provider, the inspection may be performed by a facility approved by the director. If a provider requests that the inspection be performed by a facility approved by the director, the provider shall pay the cost of the inspection.

B. The director may require any ambulance service offering subscription service contracts to obtain a bond in an amount determined by the director that is based on the number of subscription service contract holders and to file the bond with the director for the protection of all subscription service contract holders in this state who are covered under that subscription contract.

C. An ambulance service shall:

1. Maintain, establish, add, move or delete suboperation stations within its base of operation to ensure that the ambulance service meets the established response times or those approved by the director in a political subdivision contract.

2. Determine the operating hours of its suboperation stations to provide for coverage of its base of operation.
3. Provide the department with a list of suboperation station locations.
4. Notify the department not later than thirty days after the ambulance service makes a change in the number or location of its suboperation stations.

D. At any time the director or the director's agents may:

1. Inquire into the operation of an ambulance service, including a person operating an ambulance that has not been issued a certificate of registration or a person who does not have or is operating outside of a certificate of necessity.
2. Conduct on-site inspections of facilities, communications equipment, vehicles, procedures, materials and equipment.
3. Review the qualifications of ambulance attendants.

E. If all ambulance services that have been granted authority to operate within the same service area or that have overlapping certificates of necessity apply for uniform rates and charges, the director may establish uniform rates and charges for the service area.

F. In consultation with the medical director of the emergency medical services and trauma system, the emergency medical services council and the medical direction commission, the director of the department of health services shall establish protocols for ambulance services to refer and advise a patient or transport a patient by the most appropriate means to the most appropriate provider of medical services based on the patient's condition. The protocols shall include triage and treatment protocols that allow all classifications of emergency medical care technicians responding to a person who has accessed 911, or a similar public dispatch number, for a condition that does not pose an immediate threat to life or limb to refer and advise a patient or transport a patient to the most appropriate health care institution as defined in section 36-401 based on the patient's condition, taking into consideration factors including patient choice, the patient's health care provider, specialized health care facilities and local protocols.

G. The director, when reviewing an ambulance service's response time compliance with its certificate of necessity, shall consider in addition to other factors the effect of hospital diversion, delayed emergency department admission and the number of ambulances engaged in response or transport in the affected area.

36-2233. Certificate of necessity to operate an ambulance service; termination; exceptions; service areas

A. Any person wishing to operate an ambulance service in this state shall apply to the department on a form prescribed by the director for a certificate of necessity.

B. The director shall issue a certificate of necessity if all of the following apply:

1. The ambulance service has a certificate of registration issued by the department for at least one ambulance pursuant to section 36-2212.
2. The director finds that public necessity requires the service or any part of the service proposed by the applicant.
3. The director finds that the applicant is fit and proper to provide the service.
4. The applicant has paid the appropriate fees pursuant to section 36-2240.
5. The applicant has filed a surety bond pursuant to section 36-2237.

C. A certificate of necessity issued pursuant to subsection B of this section shall be for all or part of the service proposed by the applicant as determined necessary by the director for public convenience and necessity.

D. This section does not require a certificate of necessity for:

1. Vehicles and persons that are exempt from a certificate of registration pursuant to section 36-2217.

2. Ambulance services operating under temporary authority pursuant to section 36-2242.

E. The director may grant a service area by one or any combination of the following descriptions:

1. Metes and bounds.

2. A city, town or political subdivision not limited to a specific date. The merger or consolidation of two or more fire districts pursuant to section 48-820 or 48-822 does not expand the service area boundaries of an existing certificate of necessity.

3. A city, town or political subdivision as of a specific date that does not include annexation.

36-2235. Terms of certificates of necessity; initial term; renewal

A. The initial certificate of necessity issued pursuant to section 36-2233 to each ambulance service shall be for a term of one year.

B. On the expiration of a certificate of necessity, if the holder of the certificate meets all requirements, applies for a renewal and pays the fees prescribed in section 36-2240, the director shall renew the certificate for a term of three years without public hearing or waiver unless cause is shown to set a hearing to consider denial or renewal for a shorter term.

C. If the director does not conclude a hearing to show cause within ninety days of the expiration date of the certificate, the certificate shall be renewed for a period of not less than one year. The term of the certificate shall be extended to three years if the director determines that cause is not established for denial or renewal for a shorter term. For the purposes of this subsection, "hearing to show cause" means a hearing ordered by the director pursuant to section 36-2245 to determine if any grounds exist to prevent an ambulance service from carrying out the provisions of subsection B of this section during the current term of the certificate.

36-2236. Nature of certificates of necessity; transfer; suspension; service area

A. A certificate of necessity issued pursuant to this article is not a franchise, may be revoked by the director and does not confer a property right on its holder.

B. A certificate of necessity shall not be assigned or otherwise transferred without the written approval of the director. When any certificate is assigned or transferred, the director shall issue to the assignee or transferee a new certificate valid only for the unexpired term of the transferred or assigned certificate.

C. In case of emergency, the director may suspend a certificate of necessity as provided in section 36-2234.

D. If a certificate of necessity issued pursuant to this article includes any city, town or other political subdivision of this state, the service area shall be all the geographical area lying within the city, town, or political subdivision, unless the certificate issued by the director specifically excludes a portion of the city, town, or political subdivision. This subsection does not affect the validity of any previously granted certificate for an unincorporated area lying within the boundaries of a city.

36-2237. Required insurance, financial responsibility or bond; revocation for failure to comply

A. The director shall not issue a certificate of necessity to an ambulance service unless the service has filed with the department a certificate of insurance or other evidence of financial responsibility in an amount the director deems necessary to adequately protect the interests of the public. The liability insurance shall bind the insurer to pay compensation for injuries to persons and for loss or damage to property resulting from the negligent operation of the ambulance service.

B. If an application for a certificate of necessity includes any type of subscription service contract and, in the director's discretion, a surety bond is necessary pursuant to section 36-2232, the director shall not issue a certificate of necessity until the applicant has filed a surety bond with the director in the form and amount determined by him on which bond the applicant is the principal obligor and this state is the obligee. The director shall approve the bond and the bond must be with a surety company authorized to transact business in this state as surety on the bond. The bond must be conditioned on the payment by the applicant to any subscribers that may be parties to any type of subscription service contract.

C. The director shall fix the total amount of the bond required and the director may increase or decrease the bond amount subject to criteria adopted by rule and regulation.

D. The director shall revoke the certificate of necessity of any ambulance service which fails to comply with this section.

36-2239. Rates or charges of ambulance service

A. An ambulance service that applies for an adjustment in its rates or charges shall automatically be granted a rate increase equal to the amount determined under section 36-2234, subsection E, if the ambulance service is so entitled. An automatic rate adjustment that is granted pursuant to this subsection and that is filed on or before April 1 is effective June 1 of that year. The department shall notify the applicant and each health care services organization as defined in section 20-1051 of the rate adjustment on or before May 1 of that year.

B. Notwithstanding subsection E of this section, if the department does not hold a hearing within ninety days after an ambulance service submits an application to the department for an adjustment of its rates or charges, the ambulance service may adjust its rates or charges to an amount not to exceed the amount sought by the ambulance service in its application to the department. An ambulance service shall not apply for an adjustment of its rates or charges more than once every six months.

C. At the time it holds a hearing on the rates or charges of an ambulance service pursuant to section 36-2234, the department may adjust the rates or charges adjusted by the ambulance service pursuant to subsection B of this section, but the adjustment shall not be retroactive.

D. Except as provided in subsection H of this section, an ambulance service shall not charge, demand or collect any remuneration for any service greater or less than or different from the rate or charge determined and fixed by the department as the rate or charge for that service. An ambulance service may charge for disposable supplies, medical supplies and medication and oxygen related costs if the charges do not exceed the manufacturer's suggested retail price, are uniform throughout the ambulance service's certificated area and are filed with the director. An ambulance service shall not refund or limit in any manner or by any device any portion of the rates or charges for a service that the department has determined and fixed or ordered as the rate or charge for that service.

E. The department shall determine and render its decision regarding all rates or charges within ninety days after commencement of the applicant's hearing for an adjustment of rates or charges. If the department does not render its decision as required by this subsection, the ambulance service may adjust its rates and charges to an amount that does not exceed the amounts sought by the ambulance service in its application to the department. If the department renders a decision to adjust the rates or charges to an amount less than that requested in the application and the ambulance service has made an adjustment to its rates and charges that is higher than the adjustment approved by the department, within thirty days after the department's decision the ambulance service shall refund to the appropriate ratepayer the difference between the ambulance service's adjusted rates and charges and the rates and charges ordered by the department. The ambulance service shall provide evidence to the department that the refund has been made. If the ambulance service fails to comply with this subsection, the director may impose a civil penalty subject to the limitations provided in section 36-2245.

F. An ambulance service shall charge the advanced life support base rate as prescribed by the director under any of the following circumstances:

1. A person requests an ambulance by dialing telephone number 911, or a similarly designated telephone number for emergency calls, and the ambulance service meets the following:

(a) The ambulance is staffed with at least one ambulance attendant.

(b) The ambulance is equipped with all required advanced life support medical equipment and supplies for the advanced life support attendants in the ambulance.

(c) The patient receives advanced life support services or is transported by the advanced life support unit.

2. Advanced life support is requested by a medical authority or by the patient.

3. The ambulance attendants administer one or more specialized treatment activities or procedures as prescribed by the department by rule.

G. An ambulance service shall charge the basic life support base rate as prescribed by the director under any of the following circumstances:

1. A person requests an ambulance by dialing telephone number 911, or a similarly designated telephone number for emergency calls, and the ambulance service meets the following:

(a) The ambulance is staffed with two ambulance attendants certified by this state.

(b) The ambulance is equipped with all required basic life support medical equipment and supplies for the basic life support medical attendants in the ambulance.

(c) The patient receives basic life support services or is transported by the basic life support unit.

2. Basic life support transportation or service is requested by a medical authority or by the patient, unless any provision of subsection F of this section applies, in which case the advanced life support rate shall apply.

H. For each contract year, the Arizona health care cost containment system administration and its contractors and subcontractors shall provide remuneration for ambulance services for persons who are enrolled in or covered by the Arizona health care cost containment system in an amount equal to 68.59 percent of the amounts as prescribed by the department as of July 1 of each year for services specified in subsections F and G of this section and 68.59 percent of the mileage charges as determined by the department as of July 1 of each year pursuant to section 36-2232. The Arizona health care cost containment system administration shall make annual adjustments to the Arizona health care cost containment system fee schedule according to the department's approved ambulance service rate in effect as of July 1 of each year. The rate adjustments made pursuant to this subsection are effective beginning October 1 of each year.

I. In establishing rates and charges the director shall consider the following factors:

1. The transportation needs assessment of the medical response system in a political subdivision.

2. The medical care consumer price index of the United States department of labor, bureau of labor statistics.

3. Whether a review is made by a local emergency medical services coordinating system in regions where that system is designated as to the appropriateness of the proposed service level.

4. The rate of return on gross revenue.

5. Response times pursuant to section 36-2232, subsection A, paragraph 2.

J. Notwithstanding section 36-2234, an ambulance service may charge an amount for medical assessment, equipment or treatment that exceeds the requirements of section 36-2205 if requested or required by a medical provider or patient.

K. Notwithstanding subsections D, F and G of this section, an ambulance service may provide gratuitous services if an ambulance is dispatched and the patient subsequently declines to be treated or transported.

36-2240. Fees

Fees not to exceed the following amounts shall be paid by the owner of an ambulance service to the department for deposit in the state general fund to be available for legislative appropriation in order to carry out the provisions of this chapter:

1. One hundred dollars upon filing an application for a certificate of necessity.

2. Fifty dollars upon filing an application to amend, transfer or renew a certificate of necessity.

3. For the issuance of an initial certificate of necessity, two hundred dollars for each ambulance proposed to be operated by the ambulance service to which the certificate is granted.

4. An annual regulatory fee of two hundred dollars for each ambulance issued a certificate of registration pursuant to section 36-2212, to be collected at the same time as the certificate of registration fee imposed by section 36-2212.

36-2241. Required records; inspection by the department

A. Pursuant to rules adopted by the director, an owner of an ambulance service shall maintain and keep within this state reasonable records, books and other data the director requires to enforce the provisions of this article. These records, books and other data shall not be destroyed for a period of three years after they are recorded. The records, books and other data shall be open to inspection by the department during reasonable office hours if the department is conducting an investigation into the operation of an ambulance service pursuant to section 36-2245.

B. If the director is holding a public rate increase hearing pursuant to section 36-2234, the department may inspect the records, books and other data to verify the truth and accuracy of these documents. The department shall conduct the inspection of these documents for a rate increase hearing only during reasonable office hours and only after giving the service at least one working day's notice.

C. If an audit is required, the department shall accept a certified audit that is performed by an independent auditor at the provider's expense in place of a department audit if the audit:

1. Is conducted in accordance with generally accepted auditing standards.
2. Includes findings regarding the ambulance service's compliance with the schedule of rates and charges approved by the director.
3. Is completed and forwarded to the department in a timely manner.

DEPARTMENT OF HEALTH SERVICES

Title 9, Chapter 13, Article 1



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 4, 2022

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

FROM: Council Staff

DATE: September 7, 2022

SUBJECT: Department of Health Services
Title 9, Chapter 13, Article 1

This Five-Year-Review Report (5YRR) from the Department of Health Services (Department) relates to rules in Title 9, Chapter 13, Article 1 regarding Hearing Screening.

In the last 5YRR of these rules the Department proposed to amend the rules, and completed a rulemaking in 2019.

Proposed Action

The Department is proposing to amend several of its rules to improve their overall clarity, conciseness, understandability, effectiveness, and consistency with other rules and statutes. The Department plans to submit a Notice of Final Rulemaking to the Council by June 2023.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes, the Department cites both general and specific statutory authority.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department believes that the cost bearers and beneficiaries affected by the rules continue to be; schools, school age children (students) and their families, the Department, and charter and private schools that are small businesses. The Department expected schools would continue to be responsible for the administration of the hearing screening program. The costs associated with administering hearing screenings were not expected to change. The overall economic impact on schools was expected to be minimal, with the benefit of the rulemaking outweighing the cost.

The Department believes that the EIS accurately indicated that the rulemaking would improve the efficiency and effectiveness of the hearing screening process and that the benefits of having the rules are greater than the costs. Additionally, the Department believes that the rules provide a significant benefit to those affected by the Sensory Screening Program. The Department estimates that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the costs and benefits considered in developing the rules. The rules do provide the least burden to affected persons.

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?

If not for the financial burden of continuing education unit requirements for hearing screeners and trainers, the Department has determined that the rules in 9 A.A.C. 13, Article 1 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective, despite the minor improvements that may be made to the rules.

4. Has the agency received any written criticisms of the rules over the last five years?

Yes, the Department indicates they received written comments to the rules. The Department properly addressed the comments, and indicated they are currently in the rulemaking process to implement vision screening criteria and requirements in the Article.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes, the Department indicates the rules are overall clear, concise, and understandable with the exception of the following:

- R9-13-107 - Records and Reporting Requirements
- R9-13-111 - Trainer Instructions, Examination, and Observation
- R9-13-114 - Requesting a Change
- R9-13-115 - Requirement for Screener or Trainer Certificate of Completion
Issued Before Article Effective Date

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates the rules are overall consistent with other rules and statutes with the exception of the following:

R9-13-101 - Definitions
R9-13-109 - Trainer Eligibility

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are overall effective in achieving their objectives with the exception of the following:

R9-13-106 - Equipment Standards 8
R9-13-108 - Screener Qualifications
R9-13-113 - Trainer Continuing Education

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.

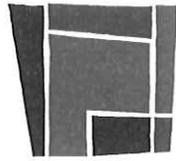
10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules were adopted before July 29, 2010.

11. **Conclusion**

As mentioned above, the Department is proposing to amend several of the rules to improve their overall clarity, conciseness, understandability, effectiveness, and consistency with other rules and statutes. The Department plans to submit a Notice of Final Rulemaking to the Council by June 2023.

Council staff recommends approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

July 13, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 13, Article 1, Hearing Screening, 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. 13, Article 1, Hearing Screening, which is due on July 31, 2022.

The Department reviewed the rules in 9 A.A.C. 13, Article 1 with the intention that the rules do not expire pursuant to A.R.S. § 41-1056(J).

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Lucinda Feeley at (602) 542-1574 or Lucinda.Feeley@azdhs.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Lane', written over a horizontal line.

Robert Lane
Director's Designee

RL:tk

Enclosures

Douglas A. Ducey | Governor

Don Herrington | Interim Director



Arizona Department of Health Services
Five-Year-Review Report
Title 9. Health Services
Chapter 13. Department of Health Services
Health Program Services
Article 1. Hearing Screening
July 2022

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-132(A)(1), (8), and 36-136(G).

Specific Statutory Authority: A.R.S. §§ 36-899, 36-899.02, and 36-899.03.

2. The objective of each rule:

Rule	Objective
R9-13-101	To define terms used in 9 A.A.C. 13, Article 1 so that a reader can consistently interpret requirements in the Article.
R9-13-102	To identify which students should receive hearing screening and which students are not required to have a hearing screening.
R9-13-103	To identify the condition of an outer ear that prevents a student from receiving hearing screening and establish criteria for each method of hearing screening.
R9-13-104	To establish a criterion that shows when a student passes a hearing screening and a requirement for a second hearing screening when a student does not pass an initial hearing screening.
R9-13-105	To specify the requirements for a school administrator to provide a parent notification regarding the parent's student hearing screening to be conducted at the school and if the student did not receive the scheduled hearing screening, the reason why the student was not screened. The notification process includes exceptions for school-provided audiologists and notification to teachers and other persons, as applicable, when a student is diagnosed as deaf or hard of hearing.
R9-13-106	To establish requirements for audiological equipment as recommended by the American Academy of Audiology for properly calibrating audiometers and tympanometers, and require regular safety inspections prior to a student's hearing screening.
R9-13-107	To require a school administrator to record and retain records on student's hearing screenings. Records regarding a student's hearing screening shall be annually reported to the Department using a Department-provided reporting form.
R9-13-108	To specify who may become a certified hearing screener and the requirements to be completed prior to obtaining an initial or renewal hearing screening certificate of completion.
R9-13-109	To specify standards for an individual who is eligible to become a hearing screening trainer and the requirements to complete prior to obtaining an initial or renewal hearing trainer certificate of completion.

R9-13-110	To establish information an individual shall provide when requesting a hearing trainer certificate of completion and to require the request to be submitted to the Department at least 30 days before November 1st of each year.
R9-13-111	To identify requirements for an individual requesting to become a trainer to complete classroom instruction, examination, and observation for an initial trainer certificate of completion.
R9-13-112	To establish requirements for an individual renewing a trainer's certificate of completion and identify criteria to be submitted to the Department, in a Department-provided format.
R9-13-113	To establish continuing education course requirements for trainers renewing a certificate of completion and identify criteria for an individual who may need an extension to complete the required continuing education courses.
R9-13-114	To establish requirements for a trainer to update their personal information and clarify that a trainer shall provide to the Department a written notice stating the information to be changed.
R9-13-115	To establish requirements for screeners and trainers who's certificate of completion was issued before the effective date of this article.

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
R9-13-106	The rule is effective in achieving the objective, however in subsection (B)(1)(b), pure tone audiometer calibration standards reference the American National Standards Institution/Acoustical Society of America (ANSI/ASA), ANSI/ASA S3.6-2010. The standards for calibrating a tympanometer is listed in subsection (2)(b) and references ANSI/ASA S3.39-1987 (R2012), which is an outdated version and needs to be updated to ANSI/ASA S3.39-1987 (R2020). To review both ANSI/ASA S3.6-2010 and ANSI/ASA S3.39-1987 (R2020) national standards on the ANSI/ASA website, an individual must pay \$150. The rules in subsection (B)(1)(b) and (2)(b) apply to individuals who specialize in calibrating hearing screening equipment. Since the Department does not specialize in calibration, it is not necessary for the Department to purchase the PDF with national standards. It would be best for the Department to omit the requirement of having to have the national standards on file. However, the Department shall ensure the individual calibrating the equipment is following the national standards. In addition, if a member of the public were to contact the Department for a copy of the national standards PDF, the Department would not have the authority to share the document due to copyright laws.
R9-13-108	In subsection (J), the rule is not affected in achieving the objective as prescribed. The rule requires the Department to provide a list of Department-approved continuing education courses by January 1st of each calendar year. This rule was implemented by final rulemaking at 25 A.A.R. 1827, effective July 2, 2019. Due to changes in staffing and lack of resources, the Department has not adhered to the requirements prescribed in rule since implementation. According to Laws 2022, Ch. 265, which will go into effect August 22, 2022, "an agency shall not make a rule that is not specifically authorized by statute." As an assessment of the rules in this five-year-review report, the Department believes the continuing education requirements exceeds the Departments statutory authority. Additionally, the Department is currently in the process of a regular rulemaking to implement vision screening criteria and

	requirements in this Article. Continuing education courses are not required for vision screeners nor trainers. To allow for more consistency throughout this Article, it is consistent with statute to omit the continuing education requirements.
R9-13-113	The rules in this Section are not affected in achieving the objective as prescribed. The rule requires the Department to provide a list of Department-approved continuing education courses by January 1st of each calendar year. This rule was implemented by final rulemaking at 25 A.A.R. 1827, effective July 2, 2019. Due to changes in staffing and lack of resources, the Department has not adhered to the requirements prescribed in rule since implementation. According to Laws 2022, Ch. 265, which will go into effect August 22, 2022, “an agency shall not make a rule that is not specifically authorized by statute.” As an assessment of the rules in this five-year-review report, the Department believes the continuing education requirements exceeds the Departments statutory authority. Additionally, the Department is currently in the process of a regular rulemaking to implement vision screening criteria and requirements in this Article. Continuing education courses are not required for vision screeners or trainers. To allow for more consistency throughout this Article, it is consistent with statute to omit the continuing education requirements.

4. **Are the rules consistent with other rules and statutes?** Yes ___ No X

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
R9-13-101	The rule is consistent with other rules and statutes, however, as described in this 5YRR, the Department plans to repeal Section R9-13-113, Trainer Continuing Education. Repealing this Section would create an obsolete definition in R9-13-101(38). The term “immediate family member” is only used in Section R9-13-113. For consistency throughout the Article, it is best to remove the obsolete definition in R9-13-101(38) as section R9-13-113 is repealed. Removing this definition would require renumbering the subsequent terms and definitions.
R9-13-109	Subsection (B) references the information to be provided when submitting a request for a certificate of completion to the Department, this is correct however, the cross-reference to R9-13-110(C)(9) only applies to the individual’s printed name and date of signature. This cross-reference is incorrect because all of the information listed in R9-13-110(C) is required for an individual requesting a trainer certificate of completion. Amending the rule to cite only R9-13-110(C) will help make the rules more consistent.

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
R9-13-107	The rule is clear, concise, and understandable, but could be improved by correcting a grammatical error in subsection (D)(2). Adding the word “the” before “fiscal year” would allow the rule to be read more fluently and sound clearer to the reader.
R9-13-111	The rule is clear, concise, and understandable, but could be improved by correcting a grammatical error in subsection (C)(4). Amending the word “calendars” to “calendar” when describing the 30 calendar day requirement would allow the rule to be read more fluently and sound clearer to the reader.
R9-13-114	The rule is clear, concise, and understandable, but could be improved by specifying what type of personal information a trainer can update on their certificate of completion. Amending this section would decrease a burden on the Department for having to clarify the rule to members of the public inquiring about a change to the personal information.
R9-13-115	The rule is clear, concise, and understandable, but could be improved by correcting grammatical errors. Adding the preposition, “a” in subsections (C) and (D) would allow the rule to be read more fluently and sound clearer to the reader.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes X No

If yes, please fill out the table below:

Rule	Explanation
R9-13-107	The Department has received written criticisms regarding subsection (C), which requires hearing screening to be done within the first 45 calendar days of the school year. This timeframe is not always feasible, especially for large schools with several hundreds of students to be screened in a short period of time. If schools are struggling to screen students in the allotted timeframe, this could lead to rushed and inadequate hearing screenings. The objective of the rule, as implemented in the Sensory Screening Program, is to provide high quality and thorough hearing screenings. Changing the timeframe requirement to 90 calendar days would allow for hearing screenings to be done timely and most likely allow for a higher quality screening. The Department is currently undergoing a regular rulemaking to implement vision screening criteria and requirements in this Article. With that said, the timeframe to provide vision screenings to students will be within the first 90 calendar days of the school year. Amending the hearing screening rules to align with the new vision screening timeframe would allow for consistency throughout the Article.
R9-13-108	The Department has received written criticisms of the rules regarding the continuing education unit (CEU) requirements for screeners in subsection (I). The CEU requirements were implemented in 2019 through regular rulemaking. In addition, the Department has received 3 written criticisms of the rules regarding the Department not providing a list of Department-approved continuing education courses, as prescribed in subsection (J). The criticisms state that the Department has not provided a list of Department-approved courses since the implementation of the rule in 2019. Comments from the public have indicated that continuing education course requirements can be financially burdensome and time consuming. It would benefit the public to omit the continuing education course requirements for screeners. According to Laws 2022, Ch. 265, which will go into effect August 22, 2022, “an agency shall not make a rule that is not specifically authorized by statute.” As an assessment of the rules in

	<p>this five-year-review report, the Department believes the continuing education requirements exceeds the Departments statutory authority. Additionally, the Department is currently in the process of a regular rulemaking to implement vision screening criteria and requirements in this Article. Continuing education courses are not required for vision screeners nor trainers. To allow for more consistency throughout this Article, it would be beneficial to omit the continuing education requirements.</p>
R9-13-108	<p>The Department has received written criticisms regarding the required length of time for hearing trainer classroom instruction being too long. In many cases, trainers are able to go through all of the required materials in less than the required timeframe as prescribed in subsection (I). To be less burdensome, the Department would like to remove the timeframe requirement from the rules and only require classroom instruction to cover the required material. This would allow for the classroom instruction time to be flexible and time to be used wisely. Additionally, the Department is currently in the process of a regular rulemaking to implement vision screening criteria and requirements in this Article. The classroom instruction rules for vision screening do not include an allotted timeframe, however the rules do prescribe particular classroom material to be covered. Aligning the hearing and vision screening rules in this Article would allow for more consistency.</p>
R9-13-109	<p>The Department has received written criticisms regarding the required length of time for hearing trainer classroom instruction being too long. In many cases, trainers are able to go through all of the required materials in less than the required timeframe. Currently, subsection (E)(1)(a) identifies the requirements for someone seeking an initial screener certificate of completion, including eight hours of classroom instruction. Subsection (F)(1)(b) requires four hours of classroom instruction for a screener seeking a renewal certificate of completion. To be less burdensome, the Department would like to remove the timeframe requirement from the rules and only require classroom instruction to cover the required material. This would allow for the classroom instruction time to be flexible and time to be used wisely. Additionally, the Department is currently in the process of a regular rulemaking to implement vision screening criteria and requirements in this Article. The classroom instruction rules for vision screening do not include an allotted timeframe, however the rules do prescribe particular classroom material to be covered. Aligning the hearing and vision screening rules in this Article would allow for more consistency.</p>
R9-13-112	<p>The Department has received several written criticisms of the rules regarding the continuing education unit (CEU) requirements for trainers in subsections (C)(2) and (4)(a). The criticisms state that the CEU requirement is burdensome and not cost effective. The CEU requirements were implemented in 2019 through regular rulemaking. Comments from the public have indicated that continuing education course requirements can be financially burdensome and time consuming. It would benefit the public to omit the continuing education course requirements for screeners and trainers. According to Laws 2022, Ch. 265, which will go into effect August 22, 2022, “an agency shall not make a rule that is not specifically authorized by statute.” As an assessment of the rules in this five-year-review report, the Department believes the continuing education requirements exceeds the Departments statutory authority. Additionally, the Department is currently in the process of a regular rulemaking to implement vision screening criteria and requirements in this Article. Continuing education courses are not required for vision screeners nor trainers. To allow for more consistency throughout this Article, it would be beneficial to omit the continuing education requirements.</p>
R9-13-113	<p>The Department has received 3 written criticisms regarding the Department not providing a list of Department-approved continuing education courses as prescribed in subsection (A). The criticisms state that the Department has failed to provide this list of approved courses for more than two years since the implementation of the rule in 2019. The Department has received several written criticisms of the rules regarding the continuing education unit (CEU) requirements for trainers. Comments from the public have indicated that continuing education course requirements can be financially burdensome and time consuming. It would benefit the</p>

	<p>public to omit the continuing education course requirements for trainers. According to Laws 2022, Ch. 265, which will go into effect August 22, 2022, “an agency shall not make a rule that is not specifically authorized by statute.” As an assessment of the rules in this five-year-review report, the Department believes the continuing education requirements exceeds the Departments statutory authority. Additionally, the Department is currently in the process of a regular rulemaking to implement vision screening criteria and requirements in this article. Continuing education courses are not required for vision screeners nor trainers. To allow for more consistency throughout this Article, it would be beneficial to omit the continuing education requirements.</p>
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8. Economic, small business, and consumer impact comparison:

A.R.S. § 36-899.03 requires the Department to develop rules “governing standards, procedures, techniques and criteria for conducting and administering hearing evaluation services.” The Department adopts standards and criteria that pertain to quality hearing evaluation services to Arizona school children pursuant to A.R.S. § 36-899.02 by establishing a Sensory Screening Program. Requirements for hearing evaluation services have been established by the Department in 9 A.A.C. 13, Article 1, were last revised through regular rulemaking, effective July 2, 2019. The rules provide for systematic screening by Arizona schools of the student population, allowing for early identification of hearing loss and appropriate intervention to eliminate or reduce the effects on a child’s learning and development. The Department in its 2002 economic, small business, and consumer impact statement (EIS) reported that the rulemaking for the Hearing Evaluation Services Program would affect 1,975 Arizona public, charter, accommodation, and private schools, and more than 900,000 enrolled students and their families. The 2002 rulemaking for 9 A.A.C. 13, Article 1 made significant changes to clarify the student population to be screened, including hearing screening for students attending preschool; hearing screening equipment standards; and information schools are required to maintain and report to the Department. Furthermore, based on national standards and best practices, the rulemaking made changes to update hearing screening requirements and acceptable hearing screening methods, screener training requirements, and identify standards for passing a hearing screening and student referrals. In this economic, small business, and consumer impact comparison, annual cost/revenues are designated as “minimal” when less than \$1,000.00; “moderate” when between \$1,000.00 and \$10,000.00; “substantial” when \$10,000.00 or more; and “significant” when meaningful or important, but not readily subject to quantification. The EIS stated that the rulemaking would directly affect schools, school age children and their families, the Department, and small businesses. In summary of the overall costs and benefits, the EIS reported an overall economic impact of the rulemaking to be minimal, with the benefits outweighing the costs.

Currently, the Hearing Screening Program affects over 3,000 Arizona public, accommodation, charter, and private schools and estimates about 700 charter schools and 451 private schools. As of the 2020-21, the Arizona Department of Education (ADE) reported that Arizona has approximately 1,112,256 total enrolled students¹. During the 2020-2021 school year, 405,873 students received hearing screenings and 374 students newly identified as

¹ <https://azreportcards.azed.gov/state-reports>

having hearing loss. As of May 2022, there are a total of 3,741 trainers and screeners in Arizona providing training and screening in the State of Arizona. The Department concurs with the EIS that the cost bears and beneficiaries affected by the rules continue to be; schools, school age children (students) and their families, the Department, and charter and private schools that are small businesses.

For schools, the EIS reported that the Department anticipated the rules would not significantly change the way schools conduct student hearing screenings. The Department expected schools would continue to be responsible for the administration of the hearing screening program, including ensuring students receiving hearing evaluation referrals are evaluated and students who are enrolled in special education services or under evaluation for special education have a hearing screening. The costs associated with administering hearing screenings was not expected to change and the expected cost for hearing screening per student, depending on who performed the hearing screening, was expected to be approximately \$1.50 to \$3.00. The EIS also stated that schools might incur a minimal increase in costs due to the new requirement that children enrolled in preschool have hearing screenings. A minimal increase was anticipated since a number of children enrolled in preschool programs are children with disabilities and already required to receive hearing screenings. The Arizona Department of Education showed that for the school year 2001-2002 there were 5,827 children enrolled in school districts and charter school preschool programs for children with disabilities. For the same school year, Department statistics showed that there were 11,843 preschool children screened for hearing in Arizona preschool programs. In addition, the EIS stated that a school might incur slightly higher costs to purchase and maintain hearing screening equipment, if a school chooses to use otoacoustic emission testing. The benefits for schools were expected to come from new requirements designed to improve efficiency and effectiveness of the hearing screening process and new technology and testing methodologies allowing for more accurate screening. The overall economic impact on schools was expected to be minimal, with the benefit of the rulemaking outweighing the cost.

The Department believes the schools continue to be responsible for administration of the hearing screening program as expected in the EIS. ADE reported for the 2020-2021 school year, there were 136,277 students in kindergarten through 12th grade enrolled in special education programs. Department statistics show that 78 special education students in K-12 were newly identified with hearing loss. According to ADE, there were 8,537 preschool students enrolled in special education programs in public and charter schools during the 2020-2021 school year. For the same school year, ADE reported there were 12,587 preschool children screened for hearing in Arizona preschool programs and 11 preschool students were newly identified with hearing loss. The Department has determined, based on current wages paid to individuals who perform hearing screening, the cost for hearing screening per student has increased; the current expected costs to perform a hearing screening is approximately \$4.92 per student. Early detection of hearing loss may allow for early intervention and facilitates proper development. Hearing loss is the second most common chronic physical condition². The consequences of hearing

² <http://europepmc.org/article/MED/27733282>

loss include isolation, decreased social activities, feeling of limitation, and increased depression symptoms. If hearing loss in childhood is not detected early enough, opportunities to improve and achieve a healthy life will be lost³. The Department considers the cost benefit as significant; it is meaningful and important; and believes that the impact reported in the EIS is as expected regarding its reported costs and benefits analysis for schools.

The 2019 EIS stated that for students and their families the cost of paying for medical or audiological follow-up of identified hearing loss would continue. Additionally, the EIS stated that Arizona students and their families would benefit from the revised rules as recipients of quality hearing screening services, early identification of significant hearing loss, and appropriate referral for treatment. The EIS further expected that the addition of new technologies and testing methods would allow for more accuracy in screening; resulting in more reliable results and appropriate referrals. The Department believes the impact is as expected. Additionally, the EIS report estimated to incur Department administrative costs for tracking information related to data collection and screener qualifications. As a result, the Department continues to incur moderate costs to operate the Hearing Screening Program including costs for salaries and benefits equivalent to two full-time employees, as well as costs for printed materials and hearing screening equipment. The EIS also stated the Department would benefit from rules that better protect the public, reflect industry standards and practices, and reflect current Department policy. The Department believes the expectations identified in the EIS are as anticipated. Lastly, small businesses, identified as charter and private schools, were expected to incur administrative costs in carrying out the requirements in the rules, just as the public and accommodation schools. The Department, based on data received from charter and private schools, believes that the administrative costs incurred are minimal to moderate and consistent as expected.

Seven rules (R9-13-101 through R9-13-108) were last revised through regular rulemaking, effective July 2, 2019. The Department amended the rules in 2019 to: add new definitions; update outdated screening requirements, screener qualifications, terms and definitions; make hearing screening criteria and requirements consistent with current national standards and best practices; require CEU's for hearing screeners and trainers; and simplify hearing screening population, notifications, records and reporting, and equipment standards. The rulemaking made technical changes to ensure consistency with current rulemaking format and style requirements.

The Department believes that the EIS accurately indicated that the rulemaking would improve the efficiency and effectiveness of the hearing screening process and that the benefits of having the rules are greater than the costs. Additionally, the Department believes that the rules provide a significant benefit to those affected by the Sensory Screening Program. On the basis of the information described above, the Department estimates that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the costs and benefits considered in developing the rules. The rules do provide the least burden to affected persons.

³ <https://jamanetwork.com/journals/jamapediatrics/article-abstract/2557388>

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.

In the 2017 Five-Year-Review-Report, the Department stated a plan to revise the rules to address identified issues. Through a regular rulemaking found in 25 A.A.R. 1827, the Department completed the course of action.

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:**

If not for the financial burden of CEU's for hearing screeners and trainers, the Department has determined that the rules in 9 A.A.C. 13, Article 1 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective, despite the minor improvements that may be made to the rules.

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 consistent with state and federal statutes and 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:**

The rules were adopted before July 29, 2010.

14. **Proposed course of action**

If possible, please identify a month and year by which the agency plans to complete the course of action.

Changes as described in sections three, four, six, and seven of this five-year review report could improve the effectiveness and enforcement of the rules.

The Department plans to make changes to the rules to address these items and to submit a Notice of Final Expedited Rulemaking to the Council by June 2023.

TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES- HEALTH PROGRAM SERVICES

ARTICLE 1. HEARING SCREENING

Written Comment and Criticisms

Comments and criticisms regarding the Hearing Screening rules were submitted to the Department during the comment period for the Vision Screening rulemaking, which are rules being added to this article.

Q2: How can the rules in Article 1 Hearing and Vision Screening be improved?

Please remove 9th grade as a mass screening population for both vision and hearing. This is a very difficult, very large population to capture. There are many things that need to be improved on in this draft for both hearing and vision. A discussion group formed from those of us that actually do the screenings and work in school districts would be a good thing to consider before moving forward.

The Department has limited authority/approval when amending the hearing screening rules and may not remove the 9th grade hearing screening population requirement from Article 1. The purpose of the rulemaking is to add vision screening requirements. Based on Program review, the vision screening requirements do not include "9th grade" as a vision screening population. N/C

[2] I don't believe hearing or vision screeners should be required to complete continuing education. The current set of rules have been in place since 2019 and the department has not sent out any courses. This seems wasteful. Instead I suggest adding a section to the renewal certification courses.

After hearing screening contract (ISA) with UofA expired, the Program decided not to renew and instead, chose to amend the hearing screening rules to include training of screeners and trainers (2019). The amended rules are consistent with some T³ Program requirements and consistent other licensing/certification rules promulgated by the Department. Hearing and vision screening statutes do not specifically require screeners or trainers complete continuing education, and the vision screening rules do not include continuing education for vision screeners and trainers.

R9-13-103 C.b. It would be difficult for a hearing screening to determine if there is occluding ear wax.

[9] R9-13-108 B. 2. Remove a. These topics are not pertinent to effective hearing screening. Focus on the hands on training of a hearing screener.

[8] R9-13-108.B.1. Remove a., d., and e.

The Department does not have authority to change hearing screening requirements in R9-13-108(B)(a), (d), and (e). N/C

[9] R9-13-108 B. 2. Remove a. These topics are not pertinent to effective hearing screening. Focus on the hands on training of a hearing screener.

The Department does not have authority to change hearing screening requirements in R9-13-108(B)(2). N/C

[10] R6-13-108 I. 2.I Remove this rule.

The Department does not have authority to change hearing screening requirements in R9-13-108(I)(2)(a)(i). N/C

[12] Are the Department provided continuing ed classes free? Audiologists should not have to take a trainer class and have an observation .They are state licensed and should not be required to fulfill additional hearing screening training requirements.

[13] Please shorten the length of the hearing screening training from 8 hours to 6 hours. If a trainee does not pass the observation portion of the training why have them repeat within 30 days?

[1] Consider developing online hearing screening training for the "book work" sections. A trainer can do the "hands on" training to certify competency.

[8] pg 33 E 1a, address the important information and condense, very long training. Can this be done online like vision?

[9] pg 34 hearing and vision training needs to be easier to access, reasonable and available. Licensed Audiologists should not need to be trained to be a trainer. N/C

6. R9-13-105 (F) state that the student was not screened for hearing per the three different subsections, but subsection (D)(3)(a) states that the student did not pass, so the student was screened. It is difficult to determine how this fits with "not screened".

8. R9-13-107(C)(3)(j)(i) "Were enrolled at the start of the year prior to the first hearing screening provided to students" – does this mean that the enrollment number is from the first day of school or any day prior to the first screening? We use the enrollment on the day of screening as the most accurate representation of the number of students who are to be screened and are screened.

R9-13-107(C)(3)(j)(i) Hearing N/C

10. R9-13-108 (I)(1)(a) and (I) – this is the second year that the state has not provided a list of Department-approved continuing education courses for hearing screeners. How are screeners expected to complete these CEU's when no information is provided? Yes, the Sensory Program did provide information about CEU's in the FAQ Section and after investigating all the organizations included in the "developed, endorsed, or sponsored" section, we were unable to find any offerings for CEU's for "Hearing Screeners" that were pertinent and/or affordable. Yes, "more information about this process will be forthcoming" was also included, but so far, nothing has been provided. We are now four CEU's behind for all our certificated hearing screeners and need far more guidance to find classes or the actual listing of classes as promised. It seems counterintuitive to require and offer hearing certification without providing current and usable information on available CEU's to meet the requirement.

P. 22 Section A- Suggest adding a subsection for Hearing Screening equipment to assist with flow and clarity Section A- Hearing Screening Equipment An administrator shall ensure that audiological equipment used for hearing screenings is recommended by the American Academy of Audiology

[1] Fifth grade is not necessary for hearing. The small number of students who are found with hearing problems at this age does not justify pulling all of the students away from instruction for screening. There are other ways to find students for whom there are concerns, i.e. special ed, teacher concern, new students, etc. It is a lot of time spent for very little return, especially in a large school.

Q4: What questions/comments do you have that were not addressed above?

I don't think so. Thank you for your work on this. I do want to let you know, however, that the biggest issue with screening is the lack of follow up by parents. I have heard this same concern noted from other districts, not just mine, so it is a statewide problem. We screen, rescreen, notify, follow up, provide a list of resources and how to contact them, offer transportation to appointments, and offer vouchers to pay for an eye exam and glasses, and parents still do not pursue hearing or vision exams. Or, the kid gets glasses or hearing aids and then never wears them or breaks/loses them almost immediately and all of our efforts are for nothing.

It is extremely frustrating and disheartening to see this happen because there is only so much we can do. I don't know what you can do about that, but I want to make sure you know that this is a real problem.

Hearing and vision screenings are so important in the schools. I like the changes in the grades for hearing screenings to include 5th graders. What we found as an audiology department for a school district is that there was a delay in catching late onset hearing losses when there was a gap in those grades previously.

Q2: How can the rules in Article 1 Hearing and Vision Screening be improved?

[1] It was difficult reading through the document the way it was written with hearing and vision combined. It would be much easier to follow if hearing and vision were separated. As an audiologist who is employed by a school district that effectively screens 40,000 students every year, the new rules would make our program less effective. Our program identifies approximately 100 new hearing loss every year. Concerns related to the hearing screening rules specifically are as follows:

[2] p.17 R9-13-104 C.1. The 30-45 day window for re-screening hearing has worked well in our very large program since we use tympanometry. 30 days or less does not give those abnormal tymps a chance to resolve themselves.

[3] p.18 R9-13-105 B.1. Please don't make us notify parents every year that we did not screen their child's hearing because the child wears a hearing device. Poor use of our time, and the parents will think we are idiots. And, as a parent, I would not want to be contacted about such a thing. Of course we don't screen the students who are wearing hearing devices! The whole purpose of the screening is to identify a student who needs further testing. This has obviously been taken care of if the student is wearing devices.

[4] p. 20 R9-13-105 G: Please don't make us follow-up 45 days after the parent is notified of the failed hearing screening. Parents are notified and child will be screened the following year. Our resources are so strained as it is

[5] p.24 R9-13-107 A.2. Hearing screeners have to re-certify every 4 years? When they are screening thousands of students every year, re-certifying every 5 years seems more reasonable. Hearing screener qualifications--let's keep it more simple. Development of speech and language R9-13-108 B.1.a.), Prevention of hearing loss in children (B.1.d.) and Auditory development (B.2.a.) are not pertinent to a hearing screener. Leave that to the audiologist.

[6] P.30 R9-13-108 I--Continuing education for hearing screeners and trainers???? How much does that information change? How much time and money will that cost districts? That sounds ridiculous

[7] p.32 R9-13-109 B. Do audiologists need to show documentation of hearing screenings? Certainly our master's or doctorate degree should be sufficient proof.

[8] p.33 R9-13-109 E1a Eight hours of classroom instruction for a hearing screener seems excessive. Can the information be condensed? And provided as an online training?

[9] p.36 Hearing Trainer Instruction R9-13-111 Please exempt audiologists with a current license. We need to entice more people to become trainers in our state.

[10] These rules are too prohibitive. A screener's current certificate should be valid until the expiration date. We are so strapped for hearing screeners and the training information has not changed that would make them better at what they do. Hearing screening is hearing screening

Q2: How can the rules in Article 1 Hearing and Vision Screening be improved?

Specification of why one would use pure tones as well as tympanometry. More information about how parents should be notified of the right to object to hearing screening. For example would the district website be enough?

Q1: What part(s) of the rules in Article 1 Hearing and Vision Screening do you believe are effective?

I think notification and follow is important - this is the whole point of a screening program is to determine the need for an evaluation.

Other Written Comments/Criticisms:

Janna Van Egmond <Janna@eeaz.org>
To: sensoryprogram - ADHS <sensoryprogram@azdhs.gov>

Tue, Apr 12, 2022 at 6:29 PM

Greetings,

I would like to know if any progress has been made on fulfilling R9-13-117 (A). Our non-profit has 5 certified screeners and have not seen anything on the website regarding the list of Department-approved continuing education courses. I have found another possible website, however, it will cost our non-profit \$500.00 per year for the required CEU's. Some of us are already two years behind in accruing the needed CEU credits, but we absolutely cannot afford to spend \$500.00 per year to maintain our certificates, nor can our screeners afford to pay this personally. Can you update me on what courses the Department has approved?

I look forward to hearing from you in the near future. THANK YOU!

Janna Van Egmond B.S.N.

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Lorie Miller <lorie.barbermiller@gmail.com>
To: Ashley Neves <ashley.neves@azdhs.gov>
Cc: Karen Woodhouse <kwoodhouse@eyesonlearning.org>

Mon, Nov 22, 2021 at 2:03 PM

Hi Ashley,

I wanted to let you know I am moving to the Boston MA area. I won't be doing any training in the near future unless I return to town to help out in the summer. I love training. I will be so excited when the program changes how it is changing to. I never liked changing to do the training, I always did them for free when I was the Director of Health Services in Gilbert. I trained a lot of non-Gilbert people for free over the years! Trainers are certainly not the same either. I am always surprised at the gaps in knowledge recertification people have from other trainers who most likely don't train anymore.

I am open to future conversations about doing the training and the difficulties that were encountered that could help set up the new program type training. The greatest push back is over the CEU requirements and how they will get them. COVID demands are a huge burden right now which leaves little time and energy for anything else. Plus, no money for it. Districts pay poorly for nurses (as much as 1/2 of hospital nurses) and do not provide funds to pay for continuing education.

Thank you for everything.
Lorie Miller
Lorie

From: **Nancy Novak** <nnovak@fUSD1.org>
Date: Mon, Dec 6, 2021 at 2:57 PM
Subject: Continuing Ed requirements
To: ashley.neves@azdhs.gov <ashley.neves@azdhs.gov>

Ms.

I am writing to request information on obtaining the required CEUs to maintain my certification for hearing screening. I have looked at most of the Organizations on the list provided through the link, ADHS July 1st, 2021, updates. ALL of the organizations listed require membership and then some additional cost for the CEUs.

Where can I complete the required CEUs without the cost of membership and then course costs. This seems pretty excessive to do the hearing screening that are school based.

Nancy Novak

Nancy Novak, RN, MN
Kinsey Elementary School Nurse
928-773-4062
nnovak@fUSD1.org

On Sat, Apr 23, 2022 at 6:02 PM Sheila Bruce <sBruce1515@gmail.com> wrote:

Hi Ashley,

I am getting a lot of questions about CEU's for "renewals". The rules state that if a person *renews* their certification they must complete 2 CEU's per year and submit them (8 CEU's total) before their current certification expires.

So if a person lets their certification expire completely, then takes the hearing screener certification as a "new" screener, they would not have to submit CEU's? That's how I am reading it.

I highlighted on page 11 (aka page 9) on the attached copy of the rules.

Please let me know if this is the case.

Thank you,

--

Sheila Bruce
Bruce Sensory Training
www.hearingscreening.net
602-570-1293

TITLE 9. HEALTH SERVICES

**CHAPTER 13. DEPARTMENT OF HEALTH SERVICES - HEALTH PROGRAMS
SERVICES**

ARTICLE 1. HEARING SCREENING

Section

- R9-13-101. Definitions
- R9-13-102. Hearing Screening Population
- R9-13-103. Hearing Screening Requirements
- R9-13-104. Criteria for Passing a Hearing Screening
- R9-13-105. Notification; Follow-up
- R9-13-106. Equipment Standards 8
- R9-13-107. Records and Reporting Requirements
- R9-13-108. Screener Qualifications
- R9-13-109. Trainer Eligibility
- R9-13-110. Trainer Certificate of Completion Request
- R9-13-111. Trainer Instruction, Examination, and Observation
- R9-13-112. Trainer Certificate of Completion Renewal
- R9-13-113. Trainer Continuing Education
- R9-13-114. Requesting a Change
- R9-13-115. Requirement for Screener or Trainer Certificate of Completion Issued Before Article
Effective Date
- R9-13-116. Renumbered
- R9-13-117. Renumbered

CHAPTER 13. DEPARTMENT OF HEALTH SERVICES - HEALTH PROGRAMS SERVICES

ARTICLE 1. HEARING SCREENING**R9-13-101. Definitions**

In this Article, unless the context otherwise requires:

1. “Accredited” means that an educational institution is recognized by the U.S. Department of Education as providing standards necessary to meet acceptable levels of quality for its graduates to gain admission to other reputable institutions of higher learning or to achieve credentials for professional practice.
2. “Administrator” means the principal or person having general daily control and oversight of a school or that person’s designee.
3. “Assistive listening device” has the same meaning as “assistive listening device or system” in A.R.S. § 36-1901.
4. “Audiological equipment” means an instrument used to help determine the presence, type, or degree of hearing loss, such as:
 - a. A pure tone audiometer,
 - b. A tympanometer, or
 - c. An otoacoustic emissions device.
5. “Audiological evaluation” means:
 - a. Examination of an individual’s ears;
 - b. Assessment of the functioning of the individual’s middle ear;
 - c. Testing of the individual’s ability to perceive sounds using audiological equipment; and
 - d. Analysis by a specialist of the results obtained from the activities described in subsections (a) through (c) to determine if the individual has a hearing loss and, if so, the type and degree of the individual hearing loss.
6. “Audiologist” means an individual licensed under A.R.S. Title 36, Chapter 17.
7. “Audiometer” means an electronic device that administers sounds of varying pitches and intensities to assess an individual's ability to hear the sounds.
8. “Auditory canal” means the tubular passage between the cartilaginous portion of the ear that projects from an individual’s head and the outer surface of the ear drum.
9. “Auditory nerve” means the filament of neurological tissue that:
 - a. Connects the cochlea and the brain, and
 - b. Transmits impulses related to hearing.
10. “Calendar day” means each day, that:
 - a. Is not the day of the act, event, or default from which a designated period of time begins to run; and
 - b. Includes 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. “Calibrate” means to measure the response of an instrument against a standard and adjust the instrument until the response falls within specified values according to the equipment’s manufac-

CHAPTER 13. DEPARTMENT OF HEALTH SERVICES - HEALTH PROGRAMS SERVICES

- turer specifications and by an authorized manufacturer's dealer, if recommended by the manufacturer.
12. "Certificate of completion" means a document issued to an individual who has completed the requirements in:
 - a. R9-13-108 to perform hearing screening for students according to this Article; or
 - b. R9-13-111 or R9-13-112 to provide training to individuals who perform hearing screenings.
 13. "Cochlea" means a coiled tube in the inner ear that converts sounds into neural messages.
 14. "Cochlear implant" means a device that is surgically inserted into the cochlea to electrically stimulate the auditory nerve.
 15. "Continuing education" means a course that provides instruction and training that is designed to develop or improve a trainer or screener's professional competence.
 16. "Continuing education unit" means 50 to 60 minutes of continuous course work.
 17. "Course" means a workshop, seminar, lecture, conference, or other learning program activities approved by the Department.
 18. "daPa" means dekaPascal, a standard measure of air pressure.
 19. "dB HL" means decibel hearing level, a measurement used to compare the intensity at which an individual hears sound at a particular frequency to a standard.
 20. "dB SPL" means sound pressure level measured in units of decibels.
 21. "Deaf" has the same meaning as in A.R.S. § 36-1941.
 22. "Diagnosis" means a determination of whether a student is deaf or hard of hearing that is:
 - a. Made by specialist; and
 - b. Based on an audiological evaluation of the student.
 23. "Documentation" means a method used to report information on paper, electronic, photographic, or other permanent form.
 24. "Eardrum" means the tympanic membrane in the ear that vibrates in response to sound.
 25. "Earphone" means the part of an audiometer that is worn over an individual's ear.
 26. "Electroacoustic analysis" means the evaluation by an audiologist of the functioning of a hearing aid or an assistive listening device using specialized electronic equipment.
 27. "Eustachian tube" means a passage in an individual's head that:
 - a. Connects the middle ear and the throat, and
 - b. Equalizes pressure on both sides of the eardrum.
 28. "Follow-up" means an action that serves to verify the effectiveness of a previous hearing screening that resulted in treatment.
 29. "Frequency" means the number of cycles per second of a sound wave, expressed in Hz and corresponding to the pitch of sound.
 30. "Hard of hearing" has the same meaning as in A.R.S. § 36-1941.
 31. "Hearing aid" has the same meaning as in A.R.S. § 36-1901.
 32. "Hearing loss" means the difference, expressed in decibels, between the hearing threshold of an individual and a standard reference hearing threshold.
 33. "Hearing screening" means:

CHAPTER 13. DEPARTMENT OF HEALTH SERVICES - HEALTH PROGRAMS SERVICES

- a. The same as “hearing screening evaluation” in A.R.S. § 36-899, and
 - b. Is performed by an individual who meets the requirements specified in R9-13-108 for the purpose of identifying students who may need further evaluation; or
 - c. An audiological evaluation provided by a specialist.
34. “Hearing screening population” means the students who are expected to have a hearing screening during a school year.
35. “Hearing threshold” means the faintest sound an individual hears at each frequency at which the individual is tested.
36. “Hz” means Hertz, a unit of frequency equal to one cycle per second.
37. “Immittance” means the mobility of the parts of the middle ear during the transmission of sound vibrations through the middle ear.
38. “Immediate family member” means an individual related by birth, marriage, or adoption.
39. “Inner ear” means the part of the ear, including the semicircular canals, cochlea, and auditory nerve, that converts sound into neural messages that are sent through the auditory nerve to the brain.
40. “Intensity” means the strength of a sound wave, resulting in the perception of sound volume as expressed in decibels or decibels hearing level dB HL.
41. “KHz” means a unit of frequency equal to one thousand cycles per second or one thousand hertz.
42. “Middle ear” means the part of the ear that conducts sound to the inner ear, consisting of:
- a. The eardrum;
 - b. The three small bones called the malleus, incus, and stapes; and
 - c. The space containing the eardrum and the three small bones.
43. “ml” means a volume measurement unit.
44. “mmho” or “millimho” means a unit of electric conductance.
45. “Notification” means a method used to inform or announce information on paper, electronic, photographic, or other permanent form.
46. “Other amplification device” means a hearing product used to amplify sounds, but may not address other components of hearing loss, such as distortion.
47. “Otitis media” means inflammation of the middle ear.
48. “Otoacoustic emissions device” or “OAE device” means an instrument used to determine the status of an individual’s cochlear function by:
- a. Presenting sounds into the auditory canal with a sound generator, and
 - b. Detecting, with one or more microphones, low-intensity echoes in the auditory canal that are produced by normally functioning cochlea in response to sounds.
49. “Outer ear” means the part of the ear that projects from an individual's head and the auditory canal.
50. “Parent” means a:
- a. Natural or adoptive mother or father,
 - b. Legal guardian appointed by a court of competent jurisdiction, or
 - c. Custodian as defined in A.R.S. § 8-201.

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51. "Pass" means a recordable response detected by a hearing screener or audiological equipment consistent with established criteria for hearing screening requirements.
52. "Person" has the meaning in A.R.S. § 41-1001.
53. "Preschool" means the instruction preceding kindergarten provided to individuals three to five year old through a school.
54. "Probe" means the part of a tympanometer or an OAE that is inserted into an individual's auditory canal during a hearing screening.
55. "Pure tone hearing screening" means a type of hearing screening using single frequency sounds that is performed using a pure tone audiometer or a device that includes the functions of both an audiometer and a tympanometer.
56. "School" means:
 - a. A school as defined in A.R.S. § 15-101,
 - b. An accommodation school as defined in A.R.S. § 15-101,
 - c. A charter school as defined in A.R.S. § 15-101, or
 - d. A private school as defined in A.R.S. § 15-101.
57. "School day" means any day in which students attend an educational institution for instructional purposes.
58. "School year" means the period from July 1 through June 30.
59. "Screener" means an individual qualified to perform a hearing screening specified in R9-13-108.
60. "Semicircular canal" means the loop-shaped tubular parts of the inner ear that contain portions of the sensory organs of balance.
61. "Sound wave" means the repeating cycles of high pressure and low pressure that are made by a vibrating object.
62. "Special education" has the same meaning as in A.R.S. § 15-761.
63. "Specialist" means an audiologist or a doctor of medicine licensed according to A.R.S. Title 32, Chapters 13 or 17 who specializes in the ear, nose, and throat.
64. "Student" means an individual enrolled in a school.
65. "Supervision" means a screener is in the room observing and providing direction while an individual provides hearing screening to students specified in R9-13-108(M).
66. "Trainer" means an individual, who:
 - a. Has a current certificate of completion, and
 - b. Provides classroom instruction and assessment of competency in using audiological equipment specified in R9-13-108.
67. "Tympanogram" means a graphic display of the mobility of the middle ear in response to an acoustic stimulus as a function of air pressure in the auditory canal.
68. "Tympanometer" means a device used to determine the status of an individual's middle ear by:
 - a. Presenting sound into the auditory canal with a sound generator;
 - b. Varying the air pressures in the auditory canal via an air pump to control the movement of the tympanic membrane; and

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- c. Detecting, with a microphone, variations in sound pressure level as acoustic energy passes into the individual's middle ear.

R9-13-102. Hearing Screening Population

- A. An administrator shall ensure each student included in a school's hearing screening population receives a hearing screening.
- B. An administrator may exclude from a school's hearing screening population:
 1. A student who is 16 years of age or older;
 2. A student for whom the school has documentation from a specialist that:
 - a. States that the student received an audiological evaluation from a specialist;
 - b. Is dated within 12 months before the date the student would receive a hearing screening; or
 - c. Includes a time period during or after the current school year when the student is scheduled to receive another audiological evaluation from the audiologist or specialist; and
 - d. Contains the following information:
 - i. The student's name;
 - ii. The date the student's audiological evaluation was performed;
 - iii. The type of audiological equipment used;
 - iv. Whether the student has been diagnosed as being deaf or hard of hearing and, if so, the type and degree of hearing loss; and
 - v. The name of the specialist who performed the audiological evaluation; and
 3. A student who is deaf or hard of hearing.
 - C. An administrator shall exclude from a school's hearing screening population a student for whom the administrator has documentation, from a student's parent objecting to the student receiving a hearing screening, specified in A.R.S. § 36-899.04, that contains:
 1. The student's name;
 2. A statement objecting to the student receiving a hearing screening, including:
 - a. The school year the student should not receive the hearing screening, or
 - b. Instruction the student is not to receive a hearing screening until the parent notifies the administrator that the student may receive a hearing screening; and
 3. The parent's name, signature, and date signed.

R9-13-103. Hearing Screening Requirements

- A. Before permitting a screener to provide a hearing screening, an administrator shall ensure that the screener:
 1. Is an audiologist; or
 2. Has a certificate of completion, specified in R9-13-108(F) or (I).
- B. If an individual is not a screener and requires supervision, an administrator shall ensure that the individual provides hearing screenings specified in R9-13-108(M).
- C. Before performing a hearing screening on a student, a screener shall:
 1. Verify that the student is on a list of students in the school's hearing screening population provided by the administrator; and

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2. Conduct a non-otoscopic inspection of the student's outer ears for anything that would contra-indicate continuation of the hearing screening, such as:
 - a. Blood or other bodily fluid in or draining from the auditory canal,
 - b. Earwax that may be occluding,
 - c. An open sore, or
 - d. A foreign object.
- D.** If a screener observes a condition specified in subsection (C)(2) when inspecting a student's outer ears, the screener shall:
 1. Not perform a hearing screening on the student, and
 2. Report the student's condition to the administrator immediately.
- E.** If a screener does not observe a condition specified in subsection (C)(2) when inspecting a student's outer ears, the screener shall:
 1. Determine the developmental and age appropriate audiological equipment to be used when:
 - a. The student is unable to understand the screener's instructions;
 - b. The student has been designated as a child with a disability, as defined in A.R.S. § 15-761; or
 - c. The student is physically or behaviorally limited in the ability to respond to perceived sounds;
 2. Use one of the hearing screening methods specified in subsection (G);
 3. Perform a hearing screening on each of the student's ears; and
 4. Comply with the requirements specified in R9-13-104(A).
- F.** If a screener determines that a student in subsection (E)(1) is not able to complete the hearing screening, the screener shall:
 1. Not perform a hearing screening on the student, and
 2. Report the student's condition to the administrator within 10 school days.
- G.** When performing a hearing screening on a student, a screener shall comply with one of the following passing criteria, if using:
 1. A pure tone audiometer to perform a three-frequency, pure tone hearing screening on each of the student's ears with response recorded at each of the following frequencies and intensities:
 - a. 1000 Hz at 20 dB HL,
 - b. 2000 Hz at 20 dB HL, and
 - c. 4000 Hz at 20 dB HL;
 2. A combination of a tympanometer and a pure tone audiometer to:
 - a. Produce a tympanogram showing the following results:
 - i. Peak acoustic immittance in mmho, ml, or compliance for a 226 Hz probe tone; or
 - ii. Tympanometric width in daPa; and
 - b. Obtain the results of a three-frequency, pure tone hearing screening on each of the student's ears with response recorded at each of the following frequencies and intensities:
 - i. 1000 Hz at 20 dB HL,
 - ii. 2000 Hz at 20 dB HL, and
 - iii. 4000 Hz at 20 dB HL; or

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3. An OAE device to:
 - a. Measure responses of the cochlea to no less than three test frequencies; and
 - b. Device display screen indicates pass.

R9-13-104. Criteria for Passing a Hearing Screening

- A. A screener shall consider a student to have passed a developmentally and age appropriate hearing screening if one of the following applies:
 1. During a three-frequency, pure tone hearing screening, performed according to R9-13-103(G)(1), the student responds to each frequency and intensity specified in R9-13-103(G)(1)(a) through (c) for each ear on which a hearing screening is performed;
 2. During a hearing screening using both a tympanometer and pure tone audiometer, performed according to R9-13-103(G)(2):
 - a. The tympanogram for each of the student's ears shows:
 - i. The height of the peak acoustic immittance is > 0.3 mmho, ml, or compliance; or
 - ii. The tympanometric width is < 250 daPa; and
 - b. The student responds to each frequency specified in R9-13-103(G)(2)(b)(i) through (iii) for each ear on which a hearing screening is performed; or
 3. During a hearing screening using an OAE device, performed according to R9-13-103(G)(3), the OAE device indicates results that the student has passed the hearing screening for each ear.
- B. For a student in a school's hearing screening population who does not receive an initial hearing screening specified in Table 13.1, an administrator shall ensure that the student receives the initial hearing screening not more than 45 school days after the date the student was expected to receive the initial hearing screening.
- C. For a student in a school's hearing screening population who does not pass an initial hearing screening according to subsection (A), an administrator shall ensure that:
 1. The student shall receive a second hearing screening no earlier than 10 school days and no later than 30 school days after the date of the hearing screening specified in R9-13-103;
 2. If the hearing screening specified in R9-13-103(G)(2) was performed using both a tympanometer and pure tone audiometer, the second hearing screening for the student is performed using both a tympanometer and pure tone audiometer; and
 3. If the hearing screening specified in R9-13-103(G)(3) was performed using an otoacoustic emissions device, the second hearing screening for the student is performed using an otoacoustic emissions device.
- D. If a student does not pass the second hearing screening in subsection (C)(1) and (2), an administrator shall provide notification to the student's parent specified in R9-13-105.

R9-13-105. Notification; Follow-up

- A. An administrator shall provide a notification to parents of students identified in Table 13.1 that includes:
 1. The information for hearing screening to be conducted during the school year, and

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2. A reference to A.R.S. § 36-899.04 and information about the parent's right to object to their student receiving a hearing screening by submitting the document specified in R9-13-102(C) to the administrator.
- B.** If an administrator excludes a student from a hearing screening specified in R9-13-102(B)(3), the administrator shall provide a notification to the student's parent that:
1. Informs the parent, whose student wears a device listed in subsection (3)(a) through (c), that the student shall not receive a hearing screening;
 2. Recommends the parent schedule an audiological evaluation for the student with a specialist;
 3. Requests the parent in subsection (2) provide the administrator a copy of a specialist's audiological report dated within the past 12 months for the student's:
 - a. Hearing aid,
 - b. Assistive listening device, or
 - c. Other amplification device;
 4. Informs a parent, who chooses for their student to not wear a device listed in subsection (3)(a) through (c), that the student shall receive a hearing screening unless the administrator receives documentation specified in R9-13-102(C) stating that the parent does not want their student to have a hearing screening; and
 5. Informs a parent that a student may receive a hearing screening if an administrator does not have:
 - a. Documentation of an audiological report in subsection (3), or
 - b. Documentation specified in R9-13-102(C) stating that the parent does not want their student to have a hearing screening.
- C.** Except for a student in subsection (2)(a), within 10 school days after an initial hearing screening in subsection (A) has been completed, an administrator shall provide notification to a student's parent that includes:
1. The student's name; and
 2. The reason why the student did not receive a hearing screening due to:
 - a. A visual condition of the outer ear specified in R9-13-103(C)(2), or
 - b. A behavioral condition specified in R9-13-103(E)(1).
- D.** Except for a student's second hearing screening in subsection (3)(b), within 10 school days after a student receives a second hearing screening specified in R9-13-104(C), an administrator shall provide notification to a student's parent that includes:
1. The student's name;
 2. The type of hearing screening the student received, if received; and
 3. The hearing screening results whether the student:
 - a. Did not pass; or
 - b. Was not screened due to:
 - i. A visual condition of the outer ear specified in R9-13-103(C)(2), or
 - ii. A behavioral condition specified in R9-13-103(E)(1).
- E.** If a student in subsections (C) or (D) has an audiological evaluation on file at the school that is dated within the past 12 months, the student will not receive a hearing screening.

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- F.** If a student did not receive a hearing screening due to a reason identified in subsections (C)(2)(a), (D)(3)(a), or (D)(3)(b)(i), an administrator shall provide an immediate notification to the student's parent that includes:
1. The student's name;
 2. The reason for the immediate notification;
 3. A request that the parent contact a specialist to:
 - a. Examine the student's ears;
 - b. Perform an audiological evaluation; and
 - c. If the student uses any of the following, perform an:
 - i. Electroacoustic analysis of a hearing aid, an assistive listening device, or other amplification device; or
 - ii. Evaluation of a cochlear implant; and
 4. A request that the parent provide to the administrator documentation received from the specialist who examined the student that includes:
 - a. The student's name;
 - b. The name of the specialist;
 - c. The date the specialist performed the services;
 - d. The type of services provided; and
 - e. If applicable:
 - i. The results of the examination of the student's ears,
 - ii. The results of the student's audiological evaluation, including diagnosis,
 - iii. Whether there is hearing loss, including the type and degree of hearing loss,
 - iv. The type of audiological equipment used to perform the audiological evaluation; and
 - v. A recommendation for treatment.
- G.** Forty-five calendar days after sending a notification specified in subsection (F)(4), an administrator shall provide a follow-up notification to the student's parent to verify whether the student received an audiological evaluation and if evaluated, provide diagnosis.
- H.** Within 10 school days after an administrator receives documentation from a specialist of a diagnosis that a student is deaf or hard of hearing, the administrator shall provide notification of the diagnosis, consistent with the privacy requirements in applicable law, to:
1. Each of the student's teachers,
 2. Other school personnel who interacts with the student, and
 3. The persons responsible for determining the student's eligibility for special education services under A.A.C. R7-2-401.

R9-13-106. Equipment Standards

- A.** An administrator shall ensure that audiological equipment used for hearing screenings is recommended by the American Academy of Audiology.
- B.** An administrator shall ensure that:
1. A pure tone audiometer is calibrated:
 - a. Not more than 12 months before the hearing screening is planned to occur, and

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- b. According to ANSI/ASA S3.6-2010 American National Standards Institution/Acoustical Society of America, Specification for Audiometers, incorporated by reference, on file with the Department, including no future editions or amendments, and available from the American National Standards Institution at <https://webstore.ansi.org>.
2. A tympanometer is calibrated:
 - a. Not more than 12 months before the hearing screening is planned to occur; and
 - b. According to ANSI/ASA S3.39-1987 (R2012) American National Standards Institution/Acoustical Society of America, American National Standard Specifications for Instruments to Measure Aural Acoustic Impedance and Admittance (Aural Acoustic Immittance), incorporated by reference, on file with the Department, including no future editions or amendments, and available from the American National Standards Institution at <https://webstore.ansi.org>.
 3. An OAE is calibrated:
 - a. Not more than 12 months before the hearing screening is planned to occur; and
 - b. According to the specifications of the otoacoustic emissions device's manufacturer, including:
 - i. Distortion product emission,
 - ii. No less than three test frequencies between 1 and 5 kHz,
 - iii. An f2/f1 ratio of 1.22,
 - iv. A L1/L2 levels of 65/55 dB SPL, and
 - v. A pass and fail criterion based on an emission-to-noise ratio.
- C. A screener shall ensure that:
1. A pure tone audiometer:
 - a. Is inspected within one school day before the hearing screening is planned to occur; and
 - b. During the inspection in subsection (1)(a):
 - i. Had a power source and power indicator that were working,
 - ii. Had earphones that were free of noise or distortion that could interfere with a hearing screening,
 - iii. Had earphone cords that were connected securely to the pure tone audiometer and had no breaks, and
 - iv. Generated a signal at each frequency and intensity specified in R9-13-103(G)(1) that did not cross from one earphone to the other.
 2. A tympanometer:
 - a. Is inspected within one school day before the hearing screening is planned to occur; and
 - b. During the inspection in subsection (2)(a):
 - i. Had no obstruction in the tympanometer's probe, and
 - ii. Generated a signal.
 3. An OAE:
 - a. Is inspected within one school day before the hearing screening is planned to occur; and
 - b. During the inspection in subsection (3)(a):

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- i. Had no obstruction in the OAE's probe microphone, and
- ii. Generated a signal.

R9-13-107. Records and Reporting Requirements**A.** An administrator shall obtain from a screener:

1. The screener's license number, if the screener is an audiologist; or
2. A copy of the screener's certificate of completion dated within four years before the date the hearing screening is planned to occur.

B. A student's record shall include:

1. The dates and results of each hearing screening performed on the student;
2. An objection to a hearing screening made by the student's parent specified in R9-13-102(C);
3. A request for a hearing screening made by an individual listed in Table 13.1;
4. A written diagnosis received by an administrator from a specialist specified in R9-13-105(H) that a student is deaf or hard of hearing;
5. If an administrator received a written diagnosis in subsection (4), the name of each individual specified in R9-13-105(H) that received notification of the student's diagnosis and the date notified; and
6. If an administrator notified a student's parent according to R9-13-105:
 - a. A copy of the notification; or
 - b. Documentation that contains:
 - i. The reason for the notification,
 - ii. The date of notification, and
 - iii. Whether the administrator recommended that the student have an audiological evaluation completed by a specialist.

C. Between April 1 and June 30 of each school year, an administrator shall submit to the Department in a Department-provided format:

1. The school:
 - a. Name,
 - b. Address, and
 - c. Telephone number;
2. The name of the school district, if applicable; and
3. For hearing screenings conducted at the school during the school year:
 - a. The name of each screener who performed hearing screenings;
 - b. The screener's audiological license number, if applicable;
 - c. A copy of the screener's certificate of completion specified in R9-13-108(F) or R9-13-108(I)(3), if applicable;
 - d. The type of audiological equipment used to conduct the hearing screenings;
 - e. The date the audiological equipment was calibrated;
 - f. The name and title of the individual submitting the information;
 - g. The date the information is submitted;

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- h. Whether the hearing screenings for students identified in Table 13.1 were conducted within the first 45 calendar days of the school year;
- i. The number of students grouped by:
 - i. The grades listed in Table 13.1, and
 - ii. Enrollment in special education;
- j. The number of students who:
 - i. Were enrolled at the start of the school year at the time of prior to the first hearing screening provided to students,
 - ii. Were excluded from the school's hearing screening population as specified in R9-13-102(B) and Table 13.1,
 - iii. Received an initial hearing screening,
 - iv. Did not pass an initial hearing screening,
 - v. Received a second hearing screening,
 - vi. Did not pass a second hearing screening, and
 - vii. Were first identified as deaf or hard of hearing; and
- k. The number of students for whom:
 - i. An administrator provided notification to a student's parent, as specified in R9-13-105; and
 - ii. An administrator received documentation during the school year from a student's specialist related to an examination, audiological evaluation, electroacoustic analysis, or evaluation of the student's cochlear implant.

D. An administrator shall retain the information in:

1. Subsection (A) for at least three years after the date that the hearing screening occurred.
2. Subsection (B) for three school years after fiscal year of last attendance, according to Arizona State Library, Archives and Public Records, General Records Retention Schedule for All Arizona School Districts and Charter Schools Student Records.

R9-13-108. Screener Qualifications**A.** An individual may be a screener:

1. If the individual is an audiologist, or
2. If the individual:
 - a. Is at least 18 years of age;
 - b. Has a high school diploma or a general equivalency diploma;
 - c. Has the ability to recognize a student's response to hearing a range of tones at different pitches and volumes; and
 - d. Has a current certificate of completion specified in subsection (F).

B. For an individual, who is not an audiologist, to become a screener, the individual shall complete classroom instruction for pure tone audiometry provided by a trainer:

1. Introduction to hearing screening for children, including the:
 - a. Development of speech and language,
 - b. Anatomy and physiology of the ear,

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- c. Signs of hearing loss in children,
 - d. Prevention of hearing loss in children,
 - e. Otitis media, and
 - f. Infection control;
2. Essentials for hearing screening children, including:
 - a. Auditory development;
 - b. Rationale for early identification of hearing loss;
 - c. When, how, and on whom hearing screening is performed; and
 - d. How to set up a hearing screening, including the selection of a method to use for hearing screening and a location to conduct hearing screening;
 3. Hearing screening protocols, including:
 - a. Possible results of hearing screening;
 - b. Screener requirements specified in this Article;
 - c. Procedures for tracking students expected to receive hearing screening and recording hearing screening results;
 - d. Notification of and communication with the parents of students;
 - e. The information that a parent of a student who does not pass a hearing screening is requested to obtain from the student's specialist and provide to the student's school;
 - f. When and to whom a student's hearing loss is required to be reported;
 - g. Procedures for reporting hearing screening results to the Department;
 - h. What resources are available to the parent of a student who does not pass hearing screening; and
 - i. Requirements in A.R.S. Title 36, Chapter 7.2 and requirements in this Article in addition to screener requirements; and
 4. Audiological equipment, including:
 - a. A pure tone audiometer:
 - i. How a pure tone audiometer works;
 - ii. Checking the pure tone audiometer and earphones before performing hearing screening;
 - iii. Earphone placement;
 - iv. Performing hearing screening using a pure tone audiometer;
 - v. Identifying students who need a second hearing screening; and
 - vi. Identifying students for whom notification of a parent is required; and
 - b. An otoacoustic emission device:
 - i. How an otoacoustic emission device works;
 - ii. Why and when it is appropriate to use an otoacoustic emissions device is used during hearing screening;
 - iii. Performing a hearing screening using an otoacoustic emissions device with a remote probe;
 - iv. Identifying students who need a second hearing screening; and
 - v. Identifying students for whom notification of a parent is required.

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- C. An individual who has completed the hearing screening instruction in subsection (B) may request training in the use of a tympanometer by completing the following classroom instruction provided by a trainer:
1. How a tympanometer works;
 2. Why and when it is appropriate to use a tympanometer during hearing screening;
 3. The anatomy and functions of the middle ear and Eustachian tube;
 4. How to use a tympanometer;
 5. Identifying students who need a second hearing screening; and
 6. Identifying students for whom notification of a parent is required.
- D. Obtain a score of at least 80% on a written examination that covers the classroom instruction specified in subsection (B) or (C).
- E. Demonstrate competency in the use of the audiological equipment specified in subsection (B) or (C) that an individual received classroom instruction.
- F. Obtain a certificate of completion in a Department-provided format from the trainer who provided the classroom instruction, examination, and competency assessment specified in (B) through (E), as applicable, that includes:
1. The individual's name;
 2. The hearing screening methods specified in subsections (B) or (C) completed by the individual;
 3. The date the individual completed the classroom instruction in subsection (B) or (C);
 4. The date the individual completed the hearing screening:
 - a. Examination; and
 - b. Assessment, including the type of audiological equipment;
 5. The certificate of completion issue date;
 6. An attestation that the classroom instruction provided to the individual meets the requirements in subsection (B) or (C); and
 7. The trainer's printed name and date issued.
- G. A screener's certificate of completion expires four years from the issue date indicated on the certificate of completion specified in subsection (F).
- H. Prior to the expiration date of a certificate of completion, a screener shall complete the requirements in subsection (I) to renew the screener's certificate of completion.
- I. A screener, who is not an audiologist, wanting to renew a certificate of completion shall:
1. Complete two hearing screening continuing education units each year:
 - a. Specified by the Department according to subsection (J), and
 - b. Applicable to the type of audiological equipment that the screener uses when performing a hearing screening;
 2. As provided by a trainer:
 - a. Complete four hours of classroom instruction related to:
 - i. Development of speech and language,
 - ii. Essentials for hearing screening children, and
 - iii. Hearing screening protocols;

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- b. Obtain a score of at least 80% on a written examination that covers the hearing screening requirements in subsection (a); and
 - c. Demonstrate competency in the use of the audiological equipment consistent with the hearing screening training received in subsection (1) and (2);
3. Obtain a certificate of completion in a Department-provided format from the trainer who provided classroom instruction, the examination, and competency assessment in subsection (2) that includes:
- a. The screener's name;
 - b. The hearing screening methods specified in subsection (1);
 - c. The date the screener completed the methods in subsection (1);
 - d. The date the screener completed the hearing screening:
 - i. Examination; and
 - ii. Assessment, including the type of audiological equipment;
 - e. The certificate of completion issue date;
 - f. An attestation that the classroom instruction provided to the screener meets the requirements in subsections (1) and (2); and
 - g. The trainer's printed name.
- J.** By January 1 of each calendar year, the Department shall provide a list of Department-approved continuing education courses.
- K.** An individual who does not score at least 80% on a written examination in subsection (D) may retake the written examination. If an individual does not score at least 80% on the second written examination, the individual shall repeat classroom instruction in subsection (B) or (C) before taking a third written examination.
- L.** A screener, who does not score at least 80% on a written examination for renewal in subsection (I), may retake the written examination. A screener, who does not score at least 80% on the second written examination, shall repeat the classroom instruction in subsection (I)(1) and (2) before taking a third written examination.
- M.** An individual who is not a screener:
1. May use a pure tone audiometer to perform an initial three-frequency, pure tone hearing screening for a student, specified in R9-13-103(G)(1), under the supervision of a screener; and
 2. Shall not perform a hearing screening:
 - a. For a student who did not pass an initial hearing screening,
 - b. Using a combination of a tympanometer and a pure tone audiometer according to R9-13-103(G)(2); or
 - c. Using an OAE specified in R9-13-103(G)(3).

R9-13-109. Trainer Eligibility

- A.** An individual is eligible to be a trainer if the individual meets at least one of the following:
1. Has completed at least 30 semester credits at an accredited college or university related to audiology and speech-language pathology or the equivalent credits from a college or university from

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- outside the United States or its territories verified by a Department-approved third party evaluation service;
2. Has completed at least two years of employment in a position directly related to and providing assistance in the practice of audiology and speech-language pathology;
 3. Is currently licensed in this state as an audiologist according to A.R.S. Title 36, Chapter 17; or
 4. Is currently a screener who has maintained a hearing screener certificate of completion for the previous five years.
- B.** In addition to subsection (A), an individual who meets the requirement in:
1. Subsection (1) or (2), has completed at least 100 hearing screenings within the previous 12 months from the date of request specified in R9-13-110(C)(9).
 2. Subsection (3), has completed at least 25 hearing screenings within the previous 12 months from the date of request specified in R9-13-110(C)(9).
 3. Subsection (4), has completed 3,000 hearing screenings within the previous five years from the date of request specified in R9-13-110(C)(9).
- C.** Prior to the expiration date of a trainer certificate of completion, a trainer is eligible to renew a certificate of completion if the trainer demonstrates the trainer provided at least two hearing screening trainings for each year during the five-year period that a certificate of completion is valid.
- D.** The practice of a trainer includes:
1. Providing classroom instruction specified in R9-13-108(B) and (C) in a classroom;
 2. Training individuals in hearing screening skills, procedures, and techniques specified in R9-13-108(B) and (C);
 3. Observing and assessing individuals and screeners in the operations of audiological equipment specified in R9-13-108(E);
 4. Administering to individuals a hearing screening examination specified in R9-13-108(D);
 5. Entering an individual's or screener's information in the Department's hearing screening database for issuance of a certificate of completion; and
 6. Providing, if available to the public, notice to the Department indicating what, where, and when classroom instruction, examination, or assessment of competency are scheduled to be provided to individuals to become a screener specified in R9-13-110(C)(8) or R9-13-112(C)(4).
- E.** A trainer who provides instruction to an individual seeking a screener certificate of completion shall:
1. Ensure that:
 - a. Eight hours of classroom instruction is provided, and
 - b. The types of classroom instruction are consistent with R9-13-108; and
 2. Establish a hearing screening record in the Department's hearing screening database for each individual seeking a certificate of completion as a screener that includes:
 - a. The individual's:
 - i. Name,
 - ii. Address,
 - iii. E-mail address, and
 - iv. Telephone number;

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- b. The date the certificate of completion expires;
 - c. The address where the classroom instructions, examination, and assessment were held;
 - d. If applicable, the name of a sponsoring organization, such as a school, school district, or other public agency; and
 - e. Documentation indicating when classroom instruction, examination, and assessment were provided.
- F.** A trainer who provides instruction to a screener who is seeking renewal of certificate of completion shall:
1. Ensure that:
 - a. A hearing screening continuing education units are completed,
 - b. Four hours of classroom instruction is provided, and
 - c. The types of classroom instruction are consistent with R9-13-108(I); and
 2. Update the screener's record in the Department's hearing screening database for each screener seeking renewal of certificate of completion that includes:
 - a. The screener's:
 - i. Name,
 - ii. Address,
 - iii. E-mail address, and
 - iv. Telephone number;
 - b. The date the certificate of completion expires;
 - c. The address where the classroom instructions, examination, and assessment were held;
 - d. If applicable, the name of a sponsoring organization, such as a school, school district, or other public agency; and
 - e. Documentation indicating when classroom instruction, examination, and assessment were provided.
- G.** A trainer shall:
1. Comply with A.R.S. §§ 36-899 through 36-899.04, and
 2. Comply with this Article.

R9-13-110. Trainer Certificate of Completion Request

- A.** An individual may apply for a trainer certificate of completion if the individual meets the eligibility requirements specified in R9-13-109(A) and (B).
- B.** An individual applying for a trainer certificate of completion shall submit a request to the Department at least 30 days prior to November 1 of a calendar year.
- C.** An individual shall provide a request for a trainer certificate of completion to the Department in a Department-provided format that includes:
 1. The individual's;
 - a. Name,
 - b. Address,
 - c. E-mail address, and
 - d. Telephone number;

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2. If applicable, the individual's former names;
 3. If the individual has completed 30 semester credits specified in R9-13-109(A)(1), the:
 - a. Name of the accredited college or university attended,
 - b. Class title for each class completed, and
 - c. Number of semester credits for each class;
 4. If the individual has completed two years of employment specified in R9-13-109(A)(2), the:
 - a. Employer's name,
 - b. Individual's position and description of responsibilities, and
 - c. Months and years of employment;
 5. If the individual is a licensed audiologist specified in R9-13-109(A)(3), the:
 - a. Audiologist's license number, and
 - b. Date of expiration;
 6. If the individual is a screener specified in R9-13-109(A)(4), who has maintained a hearing screener certificate of completion for the previous five years, the:
 - a. Names of the school districts where the screener provided hearing screenings, and
 - b. Screener's certification of completion date of expiration;
 7. Whether the individual completed the hearing screenings specified in R9-13-109(B);
 8. An attestation that the individual affirms:
 - a. To provide, if available to the public, notice of hearing screening instruction, examination, or assessment of competency specified in R9-13-109(D) to the Department 30 calendar days prior to providing to individuals to become a screener;
 - b. To provide information for each hearing screening training specified in R9-13-109(C); and
 - c. The information provided in the request for certificate of completion is true and accurate; and
 9. The individual's printed name and date of signature.
- D.** Within 10 calendar days from the date the Department receives an individual's request for a trainer certificate of completion, the Department shall send a notification to the individual that:
1. The individual may register to take classroom instruction and written examination, and
 2. How the individual may register.
- E.** If the Department determines there is a need for additional trainers prior to the November 1 submission date in subsection (B), the Department shall provide:
1. A notice to the public that trainer certificate of completion requests will be accepted.
 2. When an individual may submit a trainer certificate of completion request.
- F.** If the Department determines not to accept any trainer certificate of completion requests in subsection (B), the Department shall provide:
1. A notice to the public that no trainer certificate of completion requests will be accepted.
 2. The notice 30 days prior to the November 1 submission date in subsection (B).
- R9-13-111. Trainer Instruction, Examination, and Observation**
- A.** An individual requesting to become a trainer shall complete required classroom instruction, written examination, and observation within 160 calendar days from the date provided in the Department's notification specified in R9-13-110(D).

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- B.** An individual, who has received notification from the Department specified in R9-13-110(D), shall attend classroom instruction provided by the Department or designee that includes:
1. Adult education learning strategies,
 2. Sensory curriculum,
 3. Hearing screening protocols, confirm
 4. Audiological equipment, and
 5. Written examination.
- C.** An individual who completes classroom instruction and written examination specified in subsection (B) shall:
1. Pass a written examination with a score of 80% or more;
 2. Obtain written confirmation from the Department or designee that indicates the individual's competency in the use of each type of audiological equipment in subsection (B)(4);
 3. Submit to the Department, in a Department-provided format, a request to schedule hearing screening training observation that includes:
 - a. The individual's:
 - i. Name,
 - ii. Address,
 - iii. E-mail address, and
 - iv. Telephone number;
 - b. The date the individual passed the written examination in subsection (C)(1); and
 - c. The date the individual is requesting the hearing screening training observation; and
 4. Submit the request to take the hearing screening training observation 30 calendar days prior to the individual's requested schedule hearing screening training observation in subsection (3)(c).
- D.** Within 10 calendar days from the date the Department receives an individual's request to schedule a hearing screening training observation, the Department shall send a notification to the individual that:
1. The individual may register for hearing screening training observation, and
 2. How the individual may register.
- E.** An individual who completes hearing screening training observation in subsection (D) shall:
1. Pass the hearing screening training observation with a score of 80% or more; and
 2. Obtain a trainer certificate of completion from the Department or designee.
- F.** Within 10 calendar days from the date an individual passed the hearing screening training observation with a score of 80% or more, the Department shall send the individual a trainer certificate of completion.
- G.** An individual, who does not score at least 80% on a written examination in subsection (D), may take a second written examination no later than 30 calendar days after having taken the first written examination.
- H.** If an individual does not score at least 80% on the second written examination, the individual shall repeat the classroom instruction in subsection (B) before taking a third written examination.

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- I. An individual who does not pass the written examination in subsection (H) shall not be issued a certificate of completion.
- J. An individual, who does not pass a training observation in subsection (E), may take a second training observation no later than 60 calendar days after having taken the first training observation.
- K. If an individual does not pass the second training observation, the individual shall repeat the classroom instruction in subsection (B) and written examination in subsection (C) before taking a third training observation.
- L. An individual who does not pass the training observation in subsection (K) shall not be issued a certificate of completion.
- M. If an individual does not complete the hearing screening training observation within 160 calendar days in subsection (E), the individual shall reapply for a trainer certificate of completion as specified in R9-13-110.
- N. By October 1 of each year, if the Department accepts requests specified in R9-13-110(B), the Department will provide a list of Department-approved core curriculum and applicable material related to classroom instruction in subsection (B).
- O. An individual, who does not pass the written examination or pass the training observation may file an appeal according to A.R.S. Title 41, Chapter 6, Article 10.

R9-13-112. Trainer Certificate of Completion Renewal

- A. A trainer's certificate of completion expires five years from the issue date specified on the certificate of completion.
- B. Except as specified in R9-13-113(H), a trainer shall renew the trainer's certificate of completion every five years.
- C. At least 60 calendar days before the expiration date of a certificate of completion, a trainer shall submit to the Department a renewal request in a Department-provided format that contains:
 - 1. The trainer's:
 - a. Name,
 - b. Address,
 - c. E-mail address, and
 - d. Telephone number;
 - 2. For each continuing education course specified in R9-13-113(B) and (C), the following:
 - a. The course title,
 - b. A course description,
 - c. The name of the individual providing the continuing education course,
 - d. The date the continuing education course was completed, and
 - e. The total number of continuing education hours attended;
 - 3. For each hearing screening training specified in R9-13-109(C), the following:
 - a. Title of the classroom instruction, examination, or assessment provided, as applicable;
 - b. Date and location of the classroom instruction, examination, or assessment provided in subsection (a); and
 - c. Number of attendees;

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4. An attestation that the trainer affirms:
 - a. The continuing education courses specified in subsection (2) are applicable and consistent with the Department's approved continuing education courses;
 - b. To provide, if available to the public, notice of hearing screening instruction, examination, or assessment of competency specified in R9-13-109(D) to the Department 30 calendar days prior to the trainer providing to individuals to become a screener; and
 - c. The information in the request for renewal is true and accurate; and
 5. The trainer's printed name and date of signature.
- D.** Within 10 calendar days from the date a trainer submits a renewal request, the Department shall send the trainer a certificate of completion.
- E.** Except as specified in R9-13-113, a trainer who does not submit a trainer renewal request according to this Section 60 calendar days prior to the expiration date of the trainer's certificate of completion, the trainer's certificate of completion expires.
- F.** Except as specified in R9-13-113, a trainer who does not complete required continuing education specified in subsection (C)(2) shall apply for a trainer certificate of completion specified in R9-13-110 and R9-13-111.

R9-13-113. Trainer Continuing Education

- A.** By January 1 of each calendar year, the Department shall provide a list of Department-approved continuing education courses.
- B.** Each calendar year, a trainer, who is not an audiologist, shall complete 10 continuing education units approved by the Department.
- C.** Every two calendar years, a trainer, who is an audiologist, shall complete 20 continuing education units approved by the Department.
- D.** A trainer shall report continuing education units completed in subsection (B) and (C) as required in a trainer renewal request specified in R9-13-112(C).
- E.** By November 1 of a calendar year or every two calendar years, as applicable, a trainer, who was prevented from completing the required continuing education units due to a personal illness or an immediate family member's illness during at least six continuous months of the preceding 12 months, may request to defer continuing education units by submitting to the Department:
1. A notification in a Department-provided format that contains:
 - a. The trainer's:
 - i. Name,
 - ii. Address,
 - iii. E-mail address, and
 - iv. Telephone number;
 - b. A statement regarding the trainer's personal or immediate family member's illness;
 - c. The number of continuing education units the trainer is requesting to defer;
 - d. The date submitted; and
 - e. An attestation that the trainer affirms the information provided in the request to defer continuing education is true and accurate; and

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2. The trainer's printed name and date of signature.
- F.** If a trainer completed any continuing education units during a calendar year in subsection (B) or every two calendar years in subsection (C), as applicable, report the completed continuing education units specified in R9-12-112(C)(2).
- G.** A trainer who defers continuing education units shall obtain the deferred continuing education during the first 180 calendar days of the subsequent calendar year.
- H.** A trainer called to active military service shall:
1. Submit a written notice of renewal extension to the Department that includes:
 - a. The trainer's:
 - i. Name,
 - ii. Address,
 - iii. E-mail address, and
 - iv. Telephone number;
 - b. A statement stating the reason for the notice of renewal extension;
 - c. The trainer's signature, including date of signature; and
 - d. A copy of the trainer's deployment documentation;
 2. Retain trainer certificate of completion for the term of service or deployment plus 180 calendar days;
 3. Defer the requirement for completing the continuing education specified in R9-13-112 for the term of service or deployment plus 180 calendar days; and
 4. Submit a renewal request according to R9-13-112 after the term of service or deployment plus 180 calendar days.

R9-13-114. Requesting a Change

A trainer requesting a change to personal information shall submit to the Department in a Department-provided format a written notice stating the information to be changed and indicating the new information within 30 calendar days after the effective date of the change.

R9-13-115. Requirement for Screener or Trainer Certificate of Completion Issued Before Article Effective Date

- A.** If a screener's certificate of completion expires before June 30, 2020, the screener whose certificate of completion includes pure tone audiometry or OAE and wishes to retain screener certificate of completion, shall complete training, examination, and assessment specified in R9-13-108 prior to the certificate's date of expiration.
- B.** If a screener's certificate of completion expires after June 30, 2020, the screener whose certificate of completion includes pure tone audiometry or OAE and wishes to retain screener certificate of completion, shall complete training, examination, and assessment specified in R9-13-108 prior to June 30, 2020.
- C.** A screener, whose certificate of completion includes both pure tone audiometry and OAE, shall renew current certificate of completion within 30 days prior to the expiration date of the certificate.

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D. A trainer, who wishes to retain trainer certificate of completion and whose certificate of completion was issued before the effective date of this Article, shall submit a certificate of completion request specified in R9-13-110 no later than 30 days prior to November 2019.

R9-13-116. Renumbered

R9-13-117. Renumbered

Table 13.1 Hearing Screening Population (students)

A. Students Included in Hearing Screening Population	
1. All grades, including preschool and kindergarten	<p>Every student:</p> <ul style="list-style-type: none"> a. Who is enrolled in special education, as required by A.R.S. Title 15, Chapter 7, Article 4 and A.A.C. R7-2-401; b. Who did not pass a hearing re-screening given to the student during the previous school year; c. For whom the school does not have any documentation that the student has previously had a hearing screening; d. Who is repeating a grade; and e. For whom one of the following requests a hearing screening: <ul style="list-style-type: none"> i. The student; ii. The student's parent; iii. A teacher; iv. A school nurse; v. A school psychologist, licensed according to A.R.S. Title 32, Chapter 19.1; vi. An audiologist, licensed according to A.R.S. § 36-1901; vii. A specialist; viii. A speech-language pathologist, licensed according to A.R.S. § 36-1901; ix. A medical physician, licensed according to A.R.S. Title 32, Chapter 13; x. An osteopathic physician licensed according to A.R.S. Title 32, Chapter 17; and xi. The Department.
2. Preschool	Every enrolled student
3. Kindergarten	Every enrolled student
4. Grade 1	Every enrolled student

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5. Grade 2	Every enrolled student for whom the school does not have: a. Documentation that the student received and passed a hearing screening in or after grade 1, or b. Documentation that meets the requirements in subsection (B).
6. Grade 3	Every enrolled student
7. Grade 4	Every enrolled student for whom the school does not have: a. Documentation that the student received and passed a hearing screening in or after grade 3, or b. Documentation that meets the requirements in subsection (B).
8. Grade 5	Every enrolled student
9. Grade 6	Every enrolled student for whom the school does not have: a. Documentation that the student received and passed a hearing screening in or after grade 5, or b. Documentation that meets the requirements in subsection (B).
10. Grade 7	Every enrolled student
11. Grade 8	Every enrolled student for whom the school does not have: a. Documentation that the student received and passed a hearing screening in or after grade 7, or b. Documentation that meets the requirements in subsection (B).
12. Grade 9	Every enrolled student
13. Grades 10, 11, and 12	Every enrolled student for whom the school does not have: a. Documentation that the student received and passed a hearing screening in or after grade 9, or b. Documentation that meets the requirements in subsection (B).
B. Students Not Included in Hearing Screening Population	
<ol style="list-style-type: none"> 1. A student who is at least 16 years of age and has requested not to receive a hearing screening according to A.R.S. § 36-899.01. 2. A student enrolled in a child care facility regulated pursuant to A.R.S. Title 36, Chapter 7.1, Child Care Programs. 	

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

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

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the

accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, 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.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

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

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. If 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 not 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.

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 fundraising 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 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.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

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 preserving or storing 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 preparing 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 36-183.02. 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.

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. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. 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.

36-899.02. Powers of the department; limitations

A. The department may, in administering the program of hearing evaluation services:

1. Provide consulting services, establish or supplement hearing evaluation services in local health departments, public or private education programs or other community agencies.

2. Provide for the training of personnel to administer hearing screening evaluations.

3. Delegate powers and duties to other state agencies, county and local health departments, county and local boards of education or boards of trustees of private education programs or other community agencies to develop and maintain periodic hearing evaluation services.

4. Provide services by contractual arrangement for the development and maintenance of periodic hearing evaluation services.

5. Accept reports of hearing evaluation from qualified medical or other professional specialists employed by parents or guardians for hearing evaluation when such reports are submitted to the department.

B. The department shall not replace any qualified existing service.

36-899.03. Rules and regulations

The director shall develop rules and regulations governing standards, procedures, techniques and criteria for conducting and administering hearing evaluation services.

DEPARTMENT OF HEALTH SERVICES

Title 9, Chapter 8, Article 4



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 4, 2022

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

FROM: Council Staff

DATE: September 8, 2022

SUBJECT: Department of Health Services
Title 9, Chapter 8, Article 4

This Five-Year Review Report (5YRR) from the Department of Health Services (Department) relates to rules in Title 8, Chapter 8, Article 4 regarding Children's Camps.

In the last 5YRR of these rules the Department proposed to complete an expedited rulemaking to adhere to recodification of A.R.S. §§ 8-551, 553, and 568. The Department completed the expedited rulemaking with an effective date of January 10, 2018.

Proposed Action

The Department indicates the rules are overall clear, concise, understandable, and effective. As specified in the report, the Department plans to complete an expedited rulemaking to amend statutory references that have been repealed by January 2023.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes, the Department cites both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department has determined that the economic impact of Article 4 does not differ significantly from what was determined by the economic, small business, and consumer impact statement (EIS) from the rulemaking in 2002.

The stakeholders include the Department, the local health departments, owners and operators of children's camps, the public, and the children attending the camps.

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 has determined that the rules under review provide the least intrusive and least costly method of achieving the regulatory objective. The Department has determined that the probable benefits to the children attending summer camps outweighs the costs of the rule, which includes paperwork and compliance costs.

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 of 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 with the exception of the following:

R9-8-403 - Time-Frames

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.

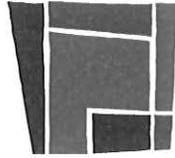
10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Yes, the Department indicates the rules are in compliance with the general permit requirements pursuant to A.R.S. § 41-1037(A)(3).

11. Conclusion

As mentioned above, the Department is proposing to amend one of its rules through expedited rulemaking. The Department plans to complete an expedited rulemaking to amend statutory references that have been repealed by January 2023.

Council staff recommends approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

July 19, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: ADHS, A.A.C. Title 9, Chapter 8, Article 4, Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year Review Report from the Arizona Department of Health Services (Department) for A.A.C. Title 9, Chapter 8, Article 4, Children's Camps, which is due on July 31, 2022.

The Department reviewed the rules in 9 A.A.C. 8, Article 4 with the intention that the rules do not expire pursuant to A.R.S. § 41-1056(J).

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Emily Carey at 602-542-5121 or emily.carey@azdh.gov.

Sincerely,



Robert Lane
Director's Designee

RL: tk

Enclosures

Douglas A. Ducey | Governor Don Herrington | Interim Director



Arizona Department of Health Services
Amended¹ Five-Year-Review Report
Title 9. Health Services

**Chapter 8. Department of Health Services – Food, Recreational, and
 Institutional Sanitation**

Article 4. Children’s Camps
July 2022

1. Authorization of the rule by existing statutes:

Authorizing statutes: A.R.S. §§ 36-104(3), 36-132(A)(18), 36-136(A)(7), and 36-136(G)
 Implementing statutes: A.R.S. §§ 36-3902, 36-3903, 36-3910, 36-3915, and 41-1072

2. The objective of each rule:

Rule	Objective
R9-8-401	To define terms used in the Article so the reader can consistently interpret the requirements.
R9-8-402	To describe the initial and renewal license application process for the operation of a children’s camp.
R9-8-403	To describe the time-frame requirements for issuing a license to a children’s camp.

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
R9-8-403	Subsection (C)(4) and (5) are inconsistent with statute because the rule cross references a A.R.S. statute that has been repealed. The cross reference should be corrected to A.R.S. Title 36, Chapter 39, Article 1, to clarify language of the rule without changing its effect and to amend the rule that is outdated.

¹ The amended language is underlined and located in Section 14 of this Five-Year-Review Report.

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):**

Arizona Revised Statutes (A.R.S.) § 36-3902 authorizes the Arizona Department of Health Services (Department) to issue a license for the operation of a children's camp and requires a person operating or seeking to operate a children's camp to submit a written application to the Department. The rules for children's camps were adopted by regular rulemaking, published in the *Arizona Administrative Register* (A.A.R.) at 8 A.A.R. 3716, effective, August 9, 2002. This rulemaking added three new Sections to a new Article 4 to address the licensing of children's camps. The 2002 EIS stated the Department would incur costs to write, review, and process the rules through promulgation and amend the current license application. The Department and the county health departments were expected to incur minimal² costs to implement and enforce the rules. Businesses and private persons and consumers directly impacted by the new rules were expected not to incur any additional costs since their responsibilities would not change with the implementation of the rules. The proposed rules would benefit children's camps by providing clarity in the application and approval process, and assuring that the Department would process all applications in a fair, consistent, and timely manner. The overall impact of the 2002 rulemaking was expected to be minimal, with the benefits of the rulemaking outweighing the costs.

The rules were last amended based on the 2017 five-year review report and the Department's proposal to amend the rules to remove decodified A.R.S. references and to cite updated references. The rules for R9-8-401

² As used in this estimated economic, small business and consumer impact comparison, cost is minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000.

and R9-8-402 were amended by final expedited rulemaking, published in 24 A.A.R. 266, effective January 10, 2018. In reviewing the rules in Article 4 for this five-year review report, the Department determined that the costs and benefits identified in the 2002 EIS are generally consistent with the actual costs and benefits of the rules. The public health benefits of having rules for children's camps outweigh the cost of the rules to the Department, the local health departments, owners and operators of children's camps, the public, and most importantly the children attending.

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.

In the 2017 five-year review report, the Department proposed to conduct an expedited rulemaking to adhere to the recodification in 2014 of A.R.S. §§ 8-551, 8-553, and 8-568. The Department completed an expedited rulemaking, effective January 10, 2018 to complete this amendment to the rules.

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 continues to use the rules without increased cost or burden. The Department has determined the rules probable benefits of children receiving greater protection and safety for having rules that regulate the operations of children's camps outweigh the probable costs of the rule. The Department believes that the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective, despite the minor updates to be made to the rules.

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)?

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 are in compliance with the general permit requirements in A.R.S. § 41-1037(A)(3).

14. **Proposed course of action:**

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department in its review of Article 4 rules has determined that the rules are effective. In this five-year-review report, the Department identifies no substantive matters that prevent the rules from being effective, clear, and enforceable, however the Department intends to complete an expediated rulemaking by January 2023 pursuant to A.R.S. § 41-1027(A)(3) and (6) to amend statutory references that have been since repealed.

ARTICLE 4. CHILDREN'S CAMPS

R9-8-401. Definitions

In this Article, unless otherwise requires:

1. "Applicant" means an individual requesting a license from the Department or a county to operate a children's camp.
2. "Bathing place" has the same meaning as in 9 A.A.C. 8, Article 8.
3. "Camp director" means an individual who runs, maintains, or otherwise controls or directs the functions of a children's camp.
4. "Children's camp" has the same meaning as in A.R.S. § 36-3901.
5. "County" means a governmental entity that has a delegation agreement with the Department as prescribed in A.R.S. § 36-3915.
6. "Delegation agreement" has the same meaning as in A.R.S. § 41-1001.
7. "Department" means the Arizona Department of Health Services.
8. "Food establishment" has the same meaning as in 9 A.A.C. 8, Article 1.

R9-8-402. Initial and Renewal License Application Process

A. An applicant shall submit a completed license application form in subsection (B) to:

1. The county in which the children's camp is located, if the county has a delegation agreement with the Department under A.R.S. § 36-3915; or
2. The Department, if there is no delegation agreement.

B. An applicant shall submit a completed license application form provided by the Department or a county that contains:

1. The name, mailing address, and telephone number of the children's camp;
2. The county in which the children's camp is located;
3. The name, telephone number, and mailing address of the applicant;
4. The name, telephone number, and if applicable, e-mail address of the camp director;
5. The dates of operation of the children's camp;
6. The number of individuals the children's camp can accommodate;
7. Whether there is a food establishment in the children's camp;
8. Whether there is a bathing place in the children's camp;
9. The potable water supply source at the children's camp;
10. The type of sewage disposal system;
11. Whether the application is for an initial or a renewal license; and
12. The signature of the applicant.

- C. With the completed license application, an applicant shall include a map that specifies the location of the children's camp, and:
1. For an initial license:
 - a. If applying to the Department, a fee of \$100, or
 - b. If applying to a county, a fee established according to A.R.S. § 36-3903.
 2. For a renewal license:
 - a. If applying to the Department, a fee of \$25 or
 - b. If applying to a county, a fee established according to A.R.S. § 36-3903.
- D. The Department or a county begins reviewing applications on May 1 of each year.

R9-8-403. Time-frames

- A. The overall time-frame described in A.R.S. § 41-1072 for an initial or a renewal license granted by the Department or county is 60 days. The applicant and the Department or a county may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive time-frame and the overall time-frame shall not exceed 25% of the overall time-frame.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for an initial or a renewal license granted by the Department or a county is 30 days and begins on May 1 of each year or on the date the application is received if after May 1.
1. The Department or a county shall mail notice of administrative completeness or deficiencies to the applicant within the administrative completeness review time-frame.
 - a. A notice of deficiencies shall list each deficiency and the information and documentation needed to complete the license application.
 - b. If the Department or a county issues a notice of deficiencies within the administrative completeness review time-frame, the administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice is issued until the date the Department or a county receives the missing information from the applicant.
 - c. If the applicant fails to submit to the Department or a county all the information and documents listed in the notice of deficiencies within 60 days of the date the Department or a county mailed the notice of deficiencies, the Department or county deems the license application withdrawn.
 2. If the Department or a county issues a license to the applicant during the administrative completeness review time-frame, the Department or a county does not issue a separate written notice of administrative completeness.
- C. The substantive review time-frame described in A.R.S. § 41-1072 is 30 days and begins on the date the notice of administrative completeness is mailed to the applicant.
1. The Department or a county shall mail a children's camp license or a written notification of denial of the license application to the applicant within the substantive review time-frame.

2. As part of the substantive-review time-frame for a children's camp license, the Department or a county may conduct an inspection of the children's camp to determine whether the children's camp has complied with the applicable requirements in subsection (C)(4) or (C)(5).
 3. If the Department or a county issues a comprehensive written request or supplemental request for information, the substantive review time-frame and the overall time-frame are suspended from the date the Department or a county issues the request until the date the Department or a county receives all of the information.
 4. If an applicant applying to the Department meets all the requirements under A.R.S. Title 8, Chapter 6, Article 1, and these rules, the Department shall issue a license to the applicant.
 5. If an applicant applying to a county meets all the requirements under A.R.S. Title 8, Chapter 6, Article 1, these rules, and county requirements consistent with A.R.S. Title 8, Chapter 6, Article 1, a county shall issue a license to the applicant.
 6. If the Department or a county disapproves a license application, the Department or a county shall send the applicant a written notice of disapproval setting forth the reasons for disapproval and all other information required in A.R.S. § 41-1076.
- D.** If a time-frame's last day is on a Saturday, Sunday, or legal holiday, the Department or a county considers the next business day as the time-frame's last day.

36-104. Powers and duties

This section is not to be construed as a statement of the department's organization. This section is intended to be a statement of powers and duties in addition to the powers and duties granted by section 36-103. The director shall:

1. Administer the following services:

(a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds used by the department.

(b) Public health support services, which shall include at a minimum:

(i) Consumer health protection programs, consistent with paragraph 25 of this section, that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.

(ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.

(iii) Laboratory services programs.

(iv) Health education and training programs.

(v) Disposition of human bodies programs.

(c) Community health services, which shall include at a minimum:

(i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.

(ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.

(iii) Children with physical disabilities services programs.

(iv) Programs for the prevention and early detection of an intellectual disability.

(d) Program planning, which shall include at least the following:

(i) An organizational unit for comprehensive health planning programs.

(ii) Program coordination, evaluation and development.

(iii) Need determination programs.

(iv) Health information programs.

2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal government liaison, grant development and management and departmental and interagency coordination.
3. Make rules for the organization and proper and efficient operation of the department.
4. Determine when a health care emergency or medical emergency situation exists or occurs within this state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.
5. Provide a system of unified and coordinated health services and programs between this state and county governmental health units at all levels of government.
6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.
8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.
9. 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 the department's duties subject to the departmental rules and regulations on the confidentiality of information.
10. Establish and maintain separate financial accounts as required by federal law or regulations.
11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.
12. Take appropriate steps to reduce or contain costs in the field of health services.
13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.
14. Encourage an effective use of available federal resources in this state.
15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.
16. Promote the effective use of health manpower and health facilities that provide health care for the citizens of this state.

17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.

18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.

19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.

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. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.

22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith-based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are not lapsing and do not revert to the state general fund at the close of the fiscal year.

23. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.

24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for the event is received from the incident commander, the emergency response commission or the department of public safety and if funding is available. Coordination of public health issues shall include general environmental health consultation and risk assessment services consistent with chapter 13, article 8 of this title and, in consultation with the Arizona poison control system, informing the public as to potential public health risks from the environmental exposure. Pursuant to chapter 13, article 8 of this title, the department of health services shall also prepare a report, in consultation with appropriate state, federal and local governmental agencies, that evaluates the public health risks from the environmental exposure. The department of health services' report shall include any department of environmental quality report and map of smoke dispersion from the fire, the results of any environmental samples taken by the department of environmental quality and the toxicological implications and public health risks of the environmental exposure. The department of health services shall consult with the Arizona poison control system regarding toxicology issues and shall prepare and produce its report for the public as soon as practicable after the event. The department of health services shall not use any monies pursuant to section 49-282, subsection E to implement this paragraph.

25. Consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture concerning its administration, pursuant to title 3, chapter 3, article 4.1, of this state's authority under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252).

26. Adopt rules pursuant to title 32, chapter 32, article 5 prescribing the designated database information to be collected by health profession regulatory boards for the health professionals workforce database.

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.

4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.

5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

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

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, 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.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

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 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. If 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 not 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.

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 fundraising 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 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.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

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 preserving or storing 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 preparing 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 36-183.02. 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.

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. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. 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.

36-3902. Application for license; issuance; posting

A. The department of health services is authorized and directed to issue licenses for the operation of children's camps: No children's camp shall be operated without first obtaining such a license.

B. On or before May 1 annually, every person operating or seeking to operate a children's camp shall make application in writing to the department of health services for a license to conduct a children's camp. The application shall be in such form and shall contain such information as the department of health services finds necessary to determine that the children's camp will be operated and maintained in accordance with the standards prescribed by this chapter.

C. Where a person operates or is seeking to operate more than one children's camp, a separate application shall be made, and license obtained, for each camp.

D. The license shall be posted in a conspicuous place on the premises occupied by each camp.

36-3903. License fee

A. The fee for a children's camp license issued by the department of health services shall be one hundred dollars for the first license and twenty-five dollars for each renewal of the license thereafter. All funds collected from this source shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

B. A county to which the department of health services has delegated powers and duties pursuant to section 36-3915 may charge and collect a license fee. A county shall not charge a fee in excess of the cost of providing the service for which the fee is charged. The county shall transmit fees collected pursuant to this subsection to the county treasurer.

36-3910. Inspection of camps; revocation of license

A. The department of health services shall make an annual inspection of each children's camp and where upon inspection it is found that there is a failure to comply with any of the standards prescribed by this chapter, the department shall give notice to the camp operator of such failure, which notice shall set forth the law violated.

B. The camp operator shall have a reasonable time after receiving such notice in which to correct such failure and to comply with the standards prescribed by this chapter. In the event the camp operator fails to comply with the requirements of such notice within a reasonable time the department may suspend or revoke his license.

36-3915. Delegation of powers

The department of health services may delegate powers and duties provided pursuant to this chapter to a county health department of the county in which the children's camp is located.

41-1072. Definitions

In this article, unless the context otherwise requires:

1. "Administrative completeness review time frame" means the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application.
2. "Overall time frame" means the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame.
3. "Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which an agency determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame.

ARIZONA COMMISSION FOR THE DEAF AND THE HARD OF HEARING

Title 9, Chapter 26, Articles 2-3, 5



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 4, 2022

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

FROM: Council Staff

DATE: September 14, 2022

SUBJECT: COMMISSION FOR THE DEAF AND THE HARD OF HEARING
Title 9, Chapter 26, Articles 2-3, 5

Summary

This Five-Year Review Report (5YRR) from the Arizona Commission for the Deaf and Hard of Hearing (Commission) relates to rules in Title 9, Chapter 26, Articles 2, 3, and 5 regarding the Telecommunications Equipment Distribution Program, Administrative Procedures, and Interpreter Licensure and Regulation respectively.

The Commission's last 5YRR was completed in 2012. The Commission indicates the 5YRR that would have been due in May 2017 was rescheduled by the Council pursuant to A.R.S. § 41-1056(H) because the Commission completed a rulemaking in 2016 that amended or added many of its rules (*See* 22 A.A.R. 1675, July 1, 2016). Nevertheless, in the 5YRR approved by the Council in 2012, the Commission indicated it would amend R9-26-101, R9-26-201, R9-26-203, R9-26-205, R9-26-301, R9-26-302, R9-26-303, R9-26-501 through R9-26-505, R9-26-507, R9-26-508, and R9-26-516. The Commission indicates all of these rules were addressed in the 2016 rulemaking.

Proposed Action

In the present 5YRR the Commission proposes to amend the following rules to improve their clarity, conciseness, and understandability:

- R9-26-201: Remove reference to DES in the definition of vocational rehabilitation counselor
- R9-26-202(5): Remove “within five years” and add that a voucher cannot be used to purchase equipment if the individual has previously purchased equipment that is still under warranty
- R9-26-202(6): Remove
- R9-26-203(1): Amend to clarify that an application may be obtained from sources other than the Commission
- R9-26-204(A)(8): Add a cross reference to the definition of vocational rehabilitation counselor
- R9-26-205(D): Remove the requirement to submit a replacement voucher form
- R9-26-501: Add definitions for Center for Assessment of Sign Language Interpreters; state-issued certification; DeafBlind interpreting; support service provider; and virtual interpreting; and update the definition of Legal A interpreter
- R9-26-503: Add a subsection specifying documents required to prove certification
- R9-26-505(G): Add work experience requirement for a provisional B interpreter licensee
- R9-26-509(G): Amend to provide that any extension is for 120 days

The Commission states it will complete a rulemaking that addresses these issues before the end of June 2023.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes, the Commission cites both general and specific statutory authority for these rules.

2. Summary of the agency’s economic impact comparison and identification of stakeholders:

The Commission believes it accurately estimated the economic impacts of the 2016 and 2021 rulemaking. The 2016 rulemaking was estimated to have some but not a substantial economic impact on licensees.

There are approximately 1.1 million Arizonans who are deaf or hard of hearing. Any resident with a hearing loss or speech-related disability validated by a hearing health care professional is eligible to receive services or devices from the telecommunications equipment program. In FY2021, the program distributed 186 telecommunication devices.

Within the industry and Maricopa County Superior Court System, a legal certification is considered the minimum necessary to interpret in a courtroom setting. As a result, the rulemaking provided that a Legal A interpreter had to obtain certification within five years to maintain the Legal A license. This provision impacted 44 licensees. Of those, two have obtained certification and can maintain their Legal A license. Those who failed to obtain certification were reclassified as Legal C interpreters and required to team with a Legal A interpreter when working in a legal setting. The rulemaking also added a continuing education provision requiring

provisional interpreters to obtain 12 hours of continuing education. A Commission-provided workshop about the continuing education requirement for provisional interpreters resulted in full compliance.

The Commission believes it accurately estimated that the 2021 rulemaking would benefit licensees by providing extra time in which to take the required performance examination. At the time of the rulemaking, 24 Legal A interpreters and three provisional interpreters needed to take a performance examination to maintain their license. Of these 27 individuals, two have completed the performance examination. The remainder has until their license renewal date in 2023 to do so.

Stakeholders include the Commission, qualified interpreters, and Arizonans who are deaf or hard of hearing.

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 has determined the probable benefits of the rules outweigh their costs and the rules impose the least burden and cost on individuals regulated by them, including compliance costs.

4. Has the agency received any written criticisms of the rules over the last five years?

The Commission indicates it has not received any written criticisms of the rules over the last five years, outside those public comments addressed during the rulemaking process.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

As outlined above regarding the Commission's proposed action, the Commission has identified ten (10) rules that could be made more clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Commission indicates that the rules are mostly consistent with other rules and statutes. However, A.R.S. § 36-1946(5) requires the Commission to establish standards and procedures to certify sign language teachers to teach American Sign Language. The Commission shall use the American Sign Language Teachers Association (ASLTA) to "certify" ASL teachers in Arizona. Arizona colleges and universities require much more college coursework to qualify as a language teacher than the ASLTA requires, however, the Commission recognizes the benefit of promoting certification for professionals teaching American Sign Language in all other educational settings, particularly K-12.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Commission indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Commission states 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 Commission indicates there is no corresponding federal law applicable to the Commission's 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?

Pursuant to A.R.S. § 41-1037(A), if an agency rule requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

The Commission indicates a general permit would not meet the applicable statutory requirements. *See* A.R.S. § 41-1037(A)(3). Specifically, the Commission states under A.R.S. § 41-1971(B), it is required to prescribe specific education, examination, and work history requirements for three different categories of interpreters. It is then required to assess whether individuals meet the requirements. Therefore, the Commission's rules requiring issuance of a regulatory permit, license, or agency authorization appear to meet an exception to the requirement for a general permit and Council staff believes the Department is in compliance with A.R.S. § 41-1037.

11. Conclusion

This 5YRR from the Commission relates to rules in Title 9, Chapter 26, Articles 2, 3, and 5 regarding the Telecommunications Equipment Distribution Program, Administrative Procedures, and Interpreter Licensure and Regulation respectively. The Commission indicates the rules are mostly consistent with other rules and statutes, effective, and enforced as written. However, the Commission indicates the rules could be made more clear, concise, and understandable and intends to complete a rulemaking that addresses these issues before the end of June 2023.

Council staff recommends approval of this report.

Douglas A.
Ducey
Governor



Sherri L. Collins
Executive
Director

June 30, 2022

VIA EMAIL: grrc@azdoa.gov

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

**RE: Commission for the Deaf and the Hard of Hearing
Five-year-review Report
A.A.C. Title 9, Chapter 26, Articles 2, 3 and 5**

Dear Ms Sornsins:

The Commission submits the referenced report for the Council's review and approval. The report is due under an extension by July 30, 2022.

The Commission certifies it is in compliance with A.R.S. § 41-1091.

For questions about this report, please contact Carmen Green Smith at 602-542-3362 or cgreen@acdhh.az.gov.

Sincerely,

Sherri Collins
Executive Director

Five-year-review Report

A.A.C. Title 9. Health

Chapter 26. Commission for the Deaf and the Hard of Hearing

Submitted for September 7, 2022

INTRODUCTION

The Commission for the Deaf and the Hard of Hearing is established at A.R.S. § 36-1942. The Commission is to act as a bureau of information to the deaf, hard of hearing, deafblind, and speech-impaired, state agencies and institutions providing services to these communities, and governmental and community agencies and programs.

The Commission operates a telecommunications equipment distribution program. The Commission is required by A.R.S. § 36-1946 (1) through (3) to make rules regarding licensure of interpreters for the deaf and the hard of hearing. A.R.S. § 36-1946(5) requires the Commission to establish standards and procedures to certify sign language teachers to teach American Sign Language. The Commission has not established these standards and procedures.

The Commission last did a 5YRR in 2012. The 5YRR that would have been due in May 2017 was rescheduled by the Council because the Commission completed a rulemaking in 2016 that amended or newly made many of its rules (See 22 A.A.R. 1675, July 1, 2016). Since the 2012 5YRR, the Commission completed the 2016 rulemaking and a second rulemaking in 2021. Under Laws 2021, Chapter 276, the Commission's statutes were amended to add "deafblind" as a category of persons to be served by the Commission.

Statute that generally authorizes the agency to make rules: The Commission does not have general rulemaking authority. All of its rulemaking authority is specific.

1. Specific statute authorizing the rule:

R9-26-201. Definitions: A.R.S. §§ 36-1941 and 36-1947

R9-26-202. Eligibility: A.R.S. § 36-1947

R9-26-203. Application Process: A.R.S. § 36-1947

R9-26-204. Persons Authorized to Certify Need for Telecommunications Equipment: A.R.S. § 36-1947

R9-26-205. Vouchers: A.R.S. § 36-1947

R9-26-206. Redeeming a Voucher: A.R.S. § 36-1947

R9-26-207. Confidentiality: A.R.S. § 36-1947

R9-26-301. Making a Complaint: A.R.S. § 41-1003

R9-26-302. Hearing Procedures: A.R.S. §§ 41-1003 and 41-1092.07

R9-26-303. Rehearing or Review of Commission Decision: A.R.S. §§ 41-1003 and 41-1092.09

R9-26-304. Disciplinary Action: A.R.S. § 36-1976

R9-26-501. Definitions: A.R.S. §§ 36-1946(1) through (3) and 36-1971(B)

R9-26-502. License Application: A.R.S. § 36-1973

R9-26-503. Application for Generalist Interpreter License: A.R.S. §§ 36-1971(B) and 36-1973

R9-26-504. Application for Legal Interpreter License: A.R.S. §§ 36-1971(B) and 36-1973

R9-26-505. Application for Provisional Interpreter License: A.R.S. §§ 36-1971(B) and 36-1973

R9-26-506. Short-term Registration of an Interpreter: A.R.S. § 36-1971(C)(1)

R9-26-507. License Renewal: A.R.S. § 36-1974

R9-26-508. Fees and Charges: A.R.S. §§ 36-1973 and 36-1974

R9-26-509. Procedures for Processing Applications; Time Frames: A.R.S. § 41-1072

R9-26-510. Continuing Education Requirement; Waiver; Extension of Time to Complete: A.R.S. § 36-1974

R9-26-511. Video Remote Interpreting: A.R.S. §§ 36-1946(1) through (3)

R9-26-515. Identification Badge Required: A.R.S. §§ 36-1946(1) through (3)

R9-26-518. Required Notices to the Commission: A.R.S. §§ 36-1946(1) through (3)

2. Objective of the rules:

R9-26-201. Definitions: The objective of the rule is to define terms applicable to the telecommunications equipment distribution program.

R9-26-202. Eligibility: The objective of the rule is to clarify who is eligible to participate in the telecommunications equipment distribution program.

R9-26-203. Application Process: The objective of the rule is to specify how to apply to participate in the telecommunications equipment distribution program.

R9-26-204. Persons Authorized to Certify Need for Telecommunications Equipment: The objective of the rule is to identify the licensed professionals qualified to determine whether an individual has a disability qualifying the individual apply to participate in the telecommunications equipment distribution program.

R9-26-205. Vouchers: The objective of the rule is to explain issuance of a voucher with which to purchase telecommunications equipment.

R9-26-206. Redeeming a Voucher: The objective of the rule is to explain the procedure for a supplier to obtain reimbursement for equipment provided under the telecommunications equipment distribution program.

R9-26-207. Confidentiality: The objective of the rule is to assure applicants and recipients that the Commission will protect identifying and health information.

R9-26-301. Making a Complaint: The objective of the rule is to specify who may and how to file a complaint.

R9-26-302. Hearing Procedures: The objective of the rule is to specify the procedures the Commission uses to conduct hearings.

R9-26-303. Rehearing or Review of Commission Decision: The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Commission decision.

R9-26-304. Disciplinary Action: The objective of the rule is to specify factors the Commission considers when determining disciplinary action.

R9-26-501. Definitions: The objective of the rule is to define terms applicable to interpreter licensure.

R9-26-502. License Application: The objective of the rule is to specify the information an applicant is required to provide to the Commission.

R9-26-503. Application for Generalist Interpreter License: The objective of the rule is to identify the specific information an applicant for a generalist interpreter license is required to provide to the Commission.

R9-26-504. Application for Legal Interpreter License: The objective of the rule is to identify the specific information an applicant for a legal interpreter license is required to provide to the Commission.

R9-26-505. Application for Provisional Interpreter License: The objective of the rule is to identify the specific information an applicant for a provisional interpreter license is required to provide to the Commission.

R9-26-506. Short-term Registration of an Interpreter: The objective of the rule is to identify the specific information an interpreter who wishes to provide non-legal interpreting in Arizona for fewer than 20 days a year is required to provide to the Commission.

R9-26-507. License Renewal: The objective of the rule is to identify the specific information a licensee is required to provide to the Commission to renew the license.

R9-26-508. Fees and Charges: The objective of the rule is to specify the fees that the Board charges for its licensing activities.

R9-26-509. Procedures for Processing Applications; Time Frames: The objective of the rule is to specify the procedures the Commission uses to process applications and the time within which the processing is done.

R9-26-510. Continuing Education Requirement; Waiver; Extension of Time to Complete: The objective of the rule is to clarify the continuing education requirement for licensees and how to obtain a waiver or extension of time of the requirement.

R9-26-511. Video Remote Interpreting: The objective of the rule is to indicate that an interpreter licensed in Arizona may provide video remote interpreting only to an individual located in Arizona and an interpreter located outside of Arizona is required to obtain an Arizona license before providing video remote interpreting to an individual located in Arizona.

R9-26-515. Identification Badge Required: The objective of the rule is to protect the public by requiring an interpreter to have and present on request an identification badge.

R9-26-518. Required Notices to the Commission: The objective of the rule is to specify the notices a licensee is required to provide to the Commission.

3. Are the rules effective in achieving their objectives? Yes

4. Are the rules consistent with other rules and statutes? Mostly yes

A.R.S. § 36-1946(5) requires the Commission to establish standards and procedures to certify sign language teachers to teach American Sign Language. The Commission shall establish standards and procedures. The Commission shall use the American Sign Language Teachers Association (ASLTA) to “certify” ASL teachers in Arizona. Arizona colleges and universities require much more college coursework to qualify as a language teacher than the ASLTA requires, however, the Commission recognizes the benefit of promoting certification for professionals teaching American Sign Language in all other educational settings, particularly K-12.

The ADA of 1990 prohibits discrimination against people with disabilities in employment, transportation, public accommodations, communications, and access to government programs and services. The ADA requires the communication needs of hard of hearing, deaf, and deafblind individuals be met. This frequently requires use of the services of a licensed American Sign Language interpreter. The ADA is not directly applicable to the Commission’s rules but the rules assist in fulfilling the mission of the ADA.

5. Are the rules enforced as written? Yes

6. Are the rules clear, concise, and understandable? Mostly yes

The Commission believes the following changes will make the rules more clear, concise, and understandable:

R9-26-201: Remove reference to DES in the definition of vocational rehabilitation counselor

R9-26-202(5): Remove “within five years” and add that a voucher cannot be used to purchase equipment if the individual has previously purchased equipment that is still under warranty

R9-26-202(6): Remove

R9-26-203(1): Amend to clarify that an application may be obtained from sources other than the Commission

R9-26-204(A)(8): Add a cross reference to the definition of vocational rehabilitation counselor

R9-26-205(D): Remove the requirement to submit a replacement voucher form

R9-26-501: Add definitions for Center for Assessment of Sign Language Interpreters; state-issued certification; DeafBlind interpreting; support service provider; and virtual interpreting; and update the definition of Legal A interpreter

R9-26-503: Add a subsection specifying documents required to prove certification

R9-26-505(G): Add work experience requirement for a provisional B interpreter licensee

R9-26-509(G): Amend to provide that any extension is for 120 days

7. Has the agency received written criticisms of the rules within the last five years? No
The Commission addressed all comments received regarding the 2021 rulemaking. It has received no criticisms outside the rulemaking process.

8. Economic, small business, and consumer impact comparison:

2016 rulemaking: 22 A.A.R. 1675, July 1, 2016

In this rulemaking, the Commission amended or made all of its rules. The EIS prepared at that time was available for review. The Commission believes it accurately estimated the rulemaking would have some but not substantial economic impact on licensees.

There are approximately 1.1 million Arizonans who are deaf or hard of hearing. Any resident with a hearing loss or speech-related disability validated by a hearing health care professional is eligible to receive services or devices from the telecommunications equipment program. In FY2021, the program distributed 186 telecommunication devices. The average value of a device is \$250. The telecommunications equipment program is funded through taxes imposed under A.R.S. § 42-5252(B) on providers of wired telecommunication services. During the last year, this tax generated \$3,702,169. There were 192 applicants for telecommunications equipment last year.

During the last year, the Commission received 10 complaints related to American Sign Language licensure. All of the complaints were resolved by settlement rather than a hearing. Four licensees paid

a monetary settlement to resolve the complaints against them. The Commission took disciplinary action against eight licensees and sent a notice of concern to two unlicensed individuals.

Last year, the Commission collected \$60,250 in licensing fees, which does not cover the cost of operating the licensing program. The Commission's current appropriation is \$3,548,400. The Commission currently has 17 FTEs.

The Commission currently licenses 797 interpreters: 706 general, 59 legal, and 32 provisional. The Commission received new applications from 216 individuals last year and licensed 196 of the applicants: 2 were licensed as legal interpreters, 181 as general, and 13 as provisional.

The Americans with Disabilities Act requires use of "qualified interpreters." The implementing regulations define a qualified interpreter as one who is able to interpret effectively, accurately, and impartially both receptively and expressively, and use any specialized vocabulary. Proceedings in a courtroom involve use of a specialized vocabulary. Within the industry and Maricopa County Superior Court system, a legal certification is considered the minimum necessary to interpret in a courtroom setting. As a result, the rulemaking provided that a Legal A interpreter had to obtain certification within five years to maintain the Legal A license. This provision impacted 44 licensees. Of those, two have obtained certification and can maintain their Legal A license. Those who failed to obtain certification were reclassified as Legal C interpreters and required to team with a Legal A interpreter when working in a legal setting.

The rulemaking also added a continuing education provision requiring provisional interpreters to obtain 12 hours of continuing education (other classes of interpreters are required to obtain continuing education by their certifying entity). A Commission-provided workshop about the continuing education requirement for provisional interpreters resulted in full compliance.

2021 rulemaking: 27 A.A.R. 1257, August 20, 2021

To address challenges arising from the COVID pandemic, the Commission amended R9-26-501 and R9-26-507 in this rulemaking. The EIS prepared at that time was available for review. The Commission believes it accurately estimated the rulemaking would benefit licensees by providing extra time in which to take the required performance examination. At the time of the rulemaking, 24 Legal A interpreters and three provisional interpreters needed to take a performance examination to

maintain their license. Of these 27 individuals, two have successfully completed the performance examination. The remainder has until their license renewal date in 2023 to do so.

9. Has the agency received any business competitiveness analyses of the rules? No
10. Has the agency completed the course of action indicated in the agency's previous 5YRR: Yes
In the 5YRR approved by the Council in 2012, the Commission indicated it would amend R9-26-101, R9-26-201, R9-26-203, R9-26-205, R9-26-301, R9-26-302, R9-26-303, R9-26-501 through R9-26-505, R9-26-507, R9-26-508, and R9-26-516. All of these rules were addressed in the rulemaking that went into effect on August 15, 2016 (See 22 A.A.R. 1675, July 1, 2016).
11. A determination after analysis 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 persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The Commission has determined the probable benefits of the rules outweigh their costs and the rules impose the least burden and cost on individuals regulated by them, including compliance costs.

Telecommunications Equipment Distribution Program:

All requirements of this program, which distributes telecommunications equipment, are designed to protect the funding available for the program. To participate in this program, an individual must:

- Meet the eligibility criteria;
- Submit an application;
- Have the individual's hearing or speech-related disability certified; and
- A supplier of distributed telecommunications equipment must seek reimbursement from the Commission.

No one is required to participate in this program. Individuals voluntarily choose to do so because they have determined the benefit of receiving telecommunications equipment outweighs the minimal costs.

Administrative Procedures:

All administrative procedures are designed to ensure due process for licensees. An individual can avoid these procedures by complying with statute and rule.

Interpreter Licensure and Regulation:

The licensing requirements are designed to protect public health and safety by ensuring interpreters have the skills needed to serve the deaf, hard of hearing, and deafblind community that relies on interpreter services. It is statute that requires interpreters to be licensed and requires the Commission to specify education, examination, and work history requirements. The rules simply specify the requirements and provide the procedure for obtaining and maintaining a license. The following requirements result in minimal costs that are outweighed by the benefits of being able to seek employment as an interpreter.

- Submit an application;
- Meet the education, examination, and work history requirements established by the Commission;
- Be certified by a certifying entity;
- Pay a licensing fee;
- Renew a license; and
- Obtain continuing education.
-

12. Are the rules more stringent than corresponding federal laws? No

No federal law applies to the Commission's rules.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

All of the rules were made after July 29, 2010. A.R.S. § 41-1037 does not apply because a general permit would not meet the applicable statutory requirements. Under A.R.S. § 41-1971(B), the Commission is required to prescribe specific education, examination, and work history requirements for three different categories of interpreters. It is then required to assess whether individuals meet the requirements.

14. Proposed course of action:

The Commission will complete a rulemaking that addresses the issues identified in item 6 before the end of June 2023.

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TITLE 9. HEALTH SERVICES

CHAPTER 26. COMMISSION FOR THE DEAF AND THE HARD OF HEARING

Authority: A.R.S. §§ 36-1946 and 36-1947 et seq.

Supp. 21-3

CHAPTER TABLE OF CONTENTS

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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.

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Article 1, consisting of Section R9-26-101, repealed effective August 15, 2016 (Supp. 16-2)

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ARTICLE 5. INTERPRETER LICENSURE AND REGULATION

(Authority: A.R.S. § 36-1946(A))

Editor's Note: The emergency rulemakings amending R9-26-501 and R9-26-507 at 27 A.A.R. 549 were due to expire on September 27, 2021. The Commission amended these Sections by final rulemaking before the expiration of the emergency. These Sections became effective August 4, 2021, at 27 A.A.R. 1257 (Supp. 21-3).

Article 5, consisting of Sections R9-26-501 through R9-26-511, adopted effective April 4, 1997 (Supp. 97-2).

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ARTICLE 1. REPEALED

R9-26-101. Renumbered

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Amended by final rulemaking at 8 A.A.R. 4292, effective November 18, 2002 (Supp. 02-3). Section R9-26-101 renumbered to Section R9-26-201 by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

ARTICLE 2. TELECOMMUNICATIONS EQUIPMENT DISTRIBUTION PROGRAM

R9-26-201. Definitions

In addition to the definitions listed in A.R.S. § 36-1941, the following terms apply to this Article and A.R.S. § 36-1947:

“Applicant” means a person who applies to the Commission for telecommunications equipment.

“Audiologist” means a person who is licensed under A.R.S. § 36-1940 by the Arizona Department of Health Services.

“Deafblind” means a person who is either deaf or hard of hearing and:

Has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or

Has a field defect where the peripheral diameter of the visual field subtends an angular distance no greater than 20 degrees, or

Has a progressive visual loss with a prognosis of one or both of the conditions stated in the two preceding subsections.

“Director” means the Executive Director of the Arizona Commission for the Deaf and Hard of Hearing.

“Hearing aid dispenser” has the same meaning as in A.R.S. § 36-1901.

“Hearing or speech-related disability” means a disability that prevents a person from hearing or articulating speech audibly or clearly, including deafness.

“Program” means the Telecommunications Equipment Distribution Program.

“Recipient” means a person who receives telecommunications equipment through the Program.

“Severely hearing or speech impaired” under A.R.S. § 36-1947(A) means a hearing or speech-related disability.

“Supplier” means a person that sells telecommunications equipment.

“Telecommunications equipment” means equipment that allows a person with a hearing or speech-related disability to access the telephone network.

“Vocational rehabilitation counselor” means a Department of Economic Security employee who has a Master’s degree in rehabilitation counseling from a university accredited by the National Council on Rehabilitation Education and who is certified by the Commission on Rehabilitation Counseling.

“Voucher” means the Commission’s authorization of payment for telecommunications equipment.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4292, effective November 18, 2002 (Supp. 02-3). Section R9-26-201 renumbered to R9-26-202; new Section R9-26-201 renumbered from R9-26-101 and amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-202. Eligibility

To be eligible for telecommunications equipment through the Program, a person shall:

1. Reside in Arizona;
2. Be a citizen of the U.S. or an alien whose presence in the U.S. is authorized under federal law;
3. Have a need for telecommunications equipment available through the Program due to a hearing or speech-related disability, as certified by an authorized person described in R9-26-203;
4. Have access to a telephone line;
5. Not have used a voucher to purchase telecommunications equipment within five years before the date of application under R9-26-203 unless the individual’s disability status has changed during that time; and
6. Have returned to the Commission all telecommunications equipment that was distributed to the person by the Commission before June 30, 2002.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section R9-26-202 renumbered from R9-26-301 and amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4292, effective November 18, 2002 (Supp. 02-3). Section R9-26-202 renumbered to R9-26-203; new Section R9-26-202 renumbered from R9-26-201 and amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-203. Application Process

To apply for telecommunications equipment under the Program, an eligible person shall:

1. Request an application for participation in the Program from the Commission; and
2. Complete and return the application to the Commission with:
 - a. Certification from an authorized person described under R9-26-204 that the applicant has a hearing or speech-related disability and needs the telecommunication equipment requested on the application; and

- b. As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section R9-26-203 renumbered from R9-26-304 and amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4292, effective November 18, 2002 (Supp. 02-3). Section R9-26-203 renumbered to R9-26-204; new Section R9-26-203 renumbered from R9-26-202 and amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-204. Persons Authorized to Certify Need for Telecommunications Equipment

- A. The following licensed professionals may certify an applicant's hearing or speech-related disability and need for the requested telecommunications equipment:
1. A dispensing audiologist licensed in accordance with A.R.S. Title 36, Chapter 17;
 2. An audiologist licensed in accordance with A.R.S. Title 36, Chapter 17;
 3. A physician licensed in accordance with A.R.S. Title 32, Chapter 13 or 17;
 4. A physician assistant licensed in accordance with A.R.S. Title 32, Chapter 25;
 5. A nurse practitioner licensed in accordance with A.R.S. Title 32, Chapter 15;
 6. A speech-language pathologist licensed in accordance with A.R.S. Title 36, Chapter 17;
 7. A hearing aid dispenser licensed in accordance with A.R.S. Title 36, Chapter 17; or
 8. A vocational rehabilitation counselor.
- B. By certifying a hearing or speech-related disability and need for the requested telecommunications equipment, the certifier attests that the certifier:
1. Is authorized to certify under subsection (A);
 2. Has evaluated the applicant's hearing or speech-related disability to determine the applicant's need for the telecommunications equipment requested on the application; and
 3. Has determined that the applicant will benefit from the telecommunications equipment requested on the application.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section R9-26-204 renumbered from R9-26-305 and amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4292, effective November 18, 2002 (Supp. 02-3). Section R9-26-204 renumbered to R9-26-205; new Section R9-26-204 renumbered from R9-26-203 and amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-205. Vouchers

- A. The Commission shall issue to an eligible applicant an individually numbered voucher for a specified dollar amount for the applicant to purchase telecommunications equipment for which the applicant has a certified need. The applicant shall use the voucher only to purchase the telecommunications equipment specified on the voucher.
- B. Vouchers are non-transferable and have no cash value.
- C. A voucher expires 90 days after its issuance date.
- D. If a voucher is lost or stolen, the applicant may apply for a replacement voucher by requesting, completing and returning to the Commission a replacement voucher form in which the applicant shall attest under penalty of perjury that:
1. The original voucher was stolen or lost; and
 2. If the original voucher is recovered, the applicant shall return the original voucher to the Commission within 30 days after the voucher is recovered.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section renumbered to R9-26-302 by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). New Section made by final rulemaking at 8 A.A.R. 4292, effective November 18, 2002 (Supp. 02-3). Section R9-26-205 renumbered to R9-26-206; new Section R9-26-205 renumbered from R9-26-204 and amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-206. Redeeming a Voucher

- A. To redeem a voucher for telecommunications equipment under the Program, a supplier shall submit to the Commission the voucher with a copy of a receipt, which is signed by the supplier and the recipient of the telecommunications equipment and which specifies the telecommunications equipment sold and its purchase price.
- B. The Commission shall verify the accuracy of information submitted on the receipt and the validity of the voucher.
- C. The Commission shall reimburse to the supplier the portion of the purchase price of the telecommunications equipment that does not exceed the amount printed on the voucher.
- D. The Commission shall not reimburse to the supplier an amount in excess of the amount printed on the voucher.
- E. If the amount printed on the voucher exceeds the purchase price of the telecommunications equipment, the supplier shall not refund the difference between the two amounts to the recipient of the telecommunications equipment in any form including money, equipment, or other goods and services.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section renumbered to R9-26-301 by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). New Section made by final rulemaking at 8 A.A.R. 4292, effective November 18, 2002 (Supp. 02-3). Section R9-26-206 renumbered to R9-26-207; new Section R9-26-206 renumbered from R9-26-205 and amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-207. Confidentiality

- A. The Commission shall use the information provided by the Program's applicants or recipients in the course of the administration of the Program solely to administer the Program.
- B. The Commission shall not disclose the name of an applicant for or recipient of telecommunications equipment without a written request for disclosure. Even with a written request for disclosure, the Commission shall not disclose personal identifying or protected health

information regarding an applicant or recipient.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). New Section R9-26-207 renumbered from R9-26-206 by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

ARTICLE 3. ADMINISTRATIVE PROCEDURES

R9-26-301. Making a Complaint

- A. A complaint may be filed by:
1. An individual for whom interpreting is provided,
 2. A person having a direct or professional interest in the incident specified in the complaint, or
 3. A person having reason to believe that interpreting was provided by an individual who is not licensed by the Commission and not exempt from licensure under A.R.S. § 36-1971(C).
- B. Complaint requirements. A complainant shall:
1. Submit the complaint to the Commission in writing or by videotape. If a complaint is submitted by videotape, the Commission shall have the complaint interpreted and transcribed into English and forward the transcript to the complainant for review and approval;
 2. Submit the complaint to the Commission within 90 days of the alleged offense; and
 3. Specify in the complaint the name of the individual complained against, date and location of the alleged offense, and the action complained about.
- C. A complainant may withdraw a complaint at any time by providing notice to the Commission.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section renumbered to R9-26-202; new Section R9-26-301 renumbered from R9-26-206 and amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section repealed; new Section renumbered from R9-26-512 and amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-302. Hearing Procedures

The Commission shall conduct all hearings in accordance with A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section R9-26-302 renumbered from R9-26-205 and amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section repealed; new Section renumbered from R9-26-515 by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-303. Rehearing or Review of Commission Decision

- A. The Commission shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.
- B. A party may amend a motion for rehearing or review at any time before the Commission rules on the motion.
- C. The Commission may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings or an order or abuse of discretion that deprived the moving party of a fair hearing;
 2. Misconduct by 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 hearing;
 5. Excessive penalty;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
 7. The Commission's decision is the result of passion or prejudice; or
 8. The findings of fact or decision is not justified by the evidence or is contrary to law.
- D. The Commission may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). The Commission shall specify the particular grounds for any order modifying a decision or granting a rehearing.
- E. When a motion for rehearing or review is based on affidavits, the affidavits shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits.
- F. No later than 15 days after the date of a decision, after giving parties notice and an opportunity to be heard, the Commission may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Commission may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.
- G. If a rehearing is granted, the Commission shall hold the rehearing within 60 days after the date on the order granting the rehearing.
- H. If the Commission makes a specific finding that a particular decision needs to be effective immediately to preserve the public peace, health, or safety and that a review or rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, the Commission shall issue the decision as a final decision without an opportunity for rehearing or review.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section repealed; new Section renumbered from R9-26-516 and amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-304. Disciplinary Action

After an opportunity for hearing and a Commission determination that a licensee violated A.R.S. Title 36, Chapter 17.1, or this Chapter, the Commission shall consider the following factors to determine the degree of discipline to impose under A.R.S. § 36-1976(A):

1. Prior conduct resulting in discipline;
2. Dishonest or self-serving motive;
3. Amount of experience as an interpreter;
4. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the Commission;

5. Submission of false evidence, false statements, or other deceptive practices during the investigative or disciplinary process;
6. Refusal to acknowledge wrongful nature of conduct;
7. Degree of harm resulting from the conduct; and
8. Whether harm resulting from the conduct was cured.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section renumbered to R9-26-203 by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). New Section R9-26-304 renumbered from R9-26-517 and amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-305. Renumbered

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section renumbered to R9-26-204 by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

ARTICLE 4. EXPIRED

R9-26-401. Expired

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 4411, effective September 30, 2007 (Supp. 07-4).

R9-26-402. Expired

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 4411, effective September 30, 2007 (Supp. 07-4).

R9-26-403. Repealed

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

ARTICLE 5. INTERPRETER LICENSURE AND REGULATION

R9-26-501. Definitions

In addition to the definitions in A.R.S. §§ 12-242 and 36-1941, in this Article, the following definitions apply unless otherwise specified:

“ACCI” means American Consortium of Certified Interpreters, an organization that certifies interpreters at one of three levels: ACCI Generalist, ACCI Advanced, or ACCI Master.

“Accredited” means approved by a regional or national accrediting agency recognized by the U.S. Department of Education.

“Applicant” means an individual seeking an original or renewal license from the Commission.

“Application” means the documents, forms, and additional information required by the Commission to be submitted by or on behalf of an applicant.

“BEI” means Board for Evaluation of Interpreters.

“CDI” means certified deaf interpreter, a certification issued by RID or BEI.

“CI” means certificate of interpretation, a certification issued by RID.

“CIC” means Court Interpreter Certification, a legal specialist certification issued by BEI.

“CLIP-R” means conditional legal interpreting permit--relay, a certification issued by RID to a deaf or hard-of-hearing interpreter or transliterator who works in a legal setting.

“Continuing education” means a workshop, seminar, lecture, conference, class, or other educational activity relevant to the practice of interpreting.

“CSC” means comprehensive skills certificate, a certification issued by RID.

“CT” means certificate of transliteration, a certification issued by RID.

“Deaf interpreter” means an individual who is deaf or hard of hearing and provides interpreting for deaf individuals with special language needs.

“EIPA” means educational interpreter performance assessment, a diagnostic tool that measures proficiency in interpreting for children or young adults in an educational setting.

“Generalist interpreter” means an individual who provides interpreting in any community setting, except a legal setting, for which the individual is qualified by education, examination, and work history. A generalist interpreter provides interpreting in a legal setting only if appointed by a judge under A.R.S. § 12-242.

“IC” means interpretation certificate, a certification issued by RID.

“Intermediary Level III or V” means a certification issued by BEI for interpreters who are deaf or hard of hearing.

“Interpreter” means an individual who provides interpreting between American Sign Language and English.

“Legal interpreter” means an individual who is qualified by education, examination, and work history to provide interpreting in a legal setting.

“Class A legal interpreter” means a legal interpreter who provides interpreting in court proceedings or any other legal setting, as prescribed under A.R.S. § 12-242, and meets the certification requirement under R9-26-504(A)(1)(a). An individual who is licensed by the Commission as a Class A legal interpreter on the date this Section takes effect, shall meet the certification requirement under R9-26-504(A)(1)(a) no later than the individual’s renewal date, as specified in R9-26-507(A), in 2023.

“Class C legal interpreter” means a legal interpreter who provides interpreting in a legal setting, as prescribed under A.R.S. § 12-242, when teamed with a Class A legal interpreter and meets the certification requirement under R9-26-504(A)(1)(b).

“Class D legal interpreter” means a legal interpreter who meets the certification requirement under R9-26-504(A)(1)(c) and is either a deaf or hard-of-hearing interpreter or an oral transliterator.

“Legal training” means a structured program presented by the Commission, a court, Bar Association, law-enforcement association, RID, accredited institution, or comparable organization, providing information relevant to legal interpreting such as the following:

- The requirements of A.R.S. § 12-242,
- The structure of the judiciary system of this state,
- The judiciary process of this state,
- Administrative adjudicatory procedures,
- Law enforcement procedures, or
- Commonly used legal terms.

“Level III, IV, or V” means a certification issued by BEI.

“Licensee” means an interpreter who holds a current license issued under A.R.S. § 36-1974 and this Article.

“License year” means the days between the date of license issuance and the date of license expiration.

“Mentor” means an individual licensed under R9-26-503 or R9-26-504 who agrees to assist a provisional licensee to develop as an interpreter by occasionally observing the provisional licensee providing interpreting services and providing feedback.

“MCSC” means master comprehensive skills certificate, a certification issued by RID.

“NAD” means the National Association of the Deaf.

“NAD III (generalist),” means a certification issued by NAD.

“NAD IV (advanced),” means a certification issued by NAD.

“NAD V (master),” means a certification issued by NAD.

“NIC” means National Interpreter Certification.

“NIC Advanced” means a certification issued by NAD-RID.

“NIC Certified” means a certification issued by NAD-RID.

“NIC Master” means a certification issued by NAD-RID.

“OC:B” means oral certificate: basic, a certification issued by BEI.

“OC:C” means oral certificate: comprehensive, a certification issued by BEI.

“OIC” means oral interpreting certificate, a certification issued by RID in one of three categories: comprehensive, spoken to visible, or visible to spoken.

“Oral transliteration” means to facilitate communication between an individual who is deaf or hard of hearing and an individual who hears by using inaudible speech and natural gestures to convey a message to the deaf or hard-of-hearing individual and understanding and verbalizing the message and intent of the speech and mouth movements of the individual who is deaf or hard of hearing.

“OTC” means oral transliteration certificate, a certification issued by RID.

“Platform or performance setting” means an environment involving an appearance by a designated speaker or performers, typically on a raised surface.

“Provisional interpreter” means an individual who is qualified by education, examination, and work history to provide interpreting while pursuing RID, NAD, or BEI certification.

“Class A provisional interpreter” means a provisional interpreter who provides oral transliteration and is working towards certification by RID, NAD, or BEI. A Class A provisional interpreter shall not provide interpreting services in a legal setting.

“Class B provisional interpreter” means a provisional interpreter who is qualified to provide interpreting services without a team interpreter licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) and (b), except in a medical, mental health, platform or performance, or legal setting. A Class B provisional interpreter may provide interpreting services in a medical, mental health, or platform or performance setting only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b). A Class B provisional interpreter shall not provide interpreting services in a legal setting.

“Class C provisional interpreter” means a provisional interpreter who is qualified to provide interpreting services only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b). A Class C provisional interpreter shall not provide interpreting services in a legal setting.

“Class D provisional interpreter” means a provisional interpreter who is deaf or hard of hearing and is qualified to provide interpreting services only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or (b) or R9-26-504(A)(1)(a) through (c). A Class D provisional interpreter shall not provide interpreting services in a legal setting.

“Qualified interpreter” means an individual licensed under this Chapter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary required by the interpreting situation.

“RID” means Registry of Interpreters for the Deaf.

“RSC” means reverse skills certificate, a certification issued by RID.

“SC:L” means specialist certificate: legal, a certification issued by RID.

“SC:PA” means specialist certificate: performing arts, a certification issued by RID.

“TC” means transliteration certificate, a certification issued by RID.

“Team” means two or more licensed interpreters, at least one of whom is licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b), providing interpreting for an individual or group of individuals during a single interpreting session.

“Trilingual Advanced or Master” means a specialist certification issued by BEI for interpreters of Spanish, English, and American Sign Language.

“Unprofessional conduct,” as used in A.R.S. § 36-1976, means:

Violation of the NAD-RID Code of Professional Conduct, 2005, which is incorporated by reference and available from the Commission and RID, 333 Commerce Street, Alexandria, VA 22314, or www.rid.org. The material incorporated includes no later edition or amendment; or

Failure to comply with a provision of A.R.S. Title 36, Chapter 17.1, Article 2 or this Chapter.

“VRI” means video remote interpreting, a service that uses video telecommunication devices to provide interpreting between or among individuals who are at one or more locations separate from the interpreter.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Amended by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2).

Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2). Section R9-26-501 amended by emergency rulemaking at 27 A.A.R. 549, with an immediate effective date of March 31, 2021; valid for 180 days under A.R.S. § 41-1026 (D) (Supp. 21-1). Section amended by final rulemaking at 27 A.A.R. 1257, with an immediate effective date of August 4, 2021 (Supp. 21-3).

R9-26-502. License Application

- A.** An applicant for an original license shall submit to the Commission the following information, on an application form provided by the Commission:
1. Applicant’s full name;
 2. Applicant’s Social Security number;
 3. Applicant’s home or business address;
 4. Applicant’s e-mail address;
 5. Applicant’s home, business, or mobile telephone number;
 6. Applicant’s birth date;
 7. Any name by which the applicant has ever been known;
 8. The start and end dates of the applicant’s current certification cycle with RID, NAD, or BEI, as applicable;
 9. Category of licensure for which application is made and if applicable, the class of legal or provisional interpreter license for which application is made;
 10. Name of any state or foreign country in which the applicant is currently licensed or certified to practice as an interpreter, the license or certificate number, date issued, date of expiration, and a statement whether the license or certificate is or was the subject of discipline and if the answer is yes, a complete explanation of the discipline including date, nature of complaint, and discipline imposed;
 11. A statement of whether the applicant has ever been denied a license or certificate to practice as an interpreter by a government licensing authority and if the answer is yes, a complete explanation of the denial including date, name of the government licensing authority, and reason for denial;
 12. A statement of whether the applicant has ever been convicted of a felony or of an offense involving moral turpitude in this or any other jurisdiction and if the answer is yes, a complete explanation of the charge and place and date of conviction;
 13. A statement of whether the applicant has been adjudicated insane or incompetent and if the answer is yes, a complete explanation including date and place of adjudication;
 13. A statement of whether the applicant’s NAD, RID, or BEI certification lapsed and if so, a complete explanation including date of and reason for the lapse;
 15. A statement of whether the applicant’s interpreter license from Arizona or another jurisdiction lapsed and if so, a complete explanation including date of and reason for the lapse;
 16. A statement of whether the applicant’s interpreter license from Arizona or another jurisdiction was subject to a complaint and if so, a complete explanation including date, allegation, and discipline imposed, if any;
 17. A statement of whether the applicant’s NAD, RID, or BEI certification was subject to a complaint and if so, a complete explanation including date, allegation, and discipline imposed, if any; and
 18. A statement signed by the applicant verifying the truthfulness of the information provided and affirming that the applicant will comply with the NAD-RID Code of Professional Conduct;
- B.** In addition to the form required under subsection (A), an applicant shall submit or have submitted on the applicant’s behalf the following:
1. Documentation of name change if the applicant is applying under a name different from the name on any of the documents required under this Article;
 2. A photocopy of the applicant’s:
 - a. High school diploma or GED or a transcript, official or unofficial, showing the degree awarded and date; or
 - b. Diploma from an accredited college or university or a transcript, official or unofficial, showing the degree awarded and date;
 3. If the answer to any item in subsections (A)(9) through (A)(15) is yes, a copy of any relevant order;
 4. As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant’s presence in the U.S. is authorized under federal law;

5. Two identical passport-size photographs of the applicant that:
 - a. Are in color, and
 - b. Are taken no more than six months before the date of application; and
6. The fee required under R9-26-508.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-503. Application for Generalist Interpreter License

To apply for a generalist interpreter license, an applicant shall:

1. Comply with R9-26-502; and
2. Submit a photocopy of current documentation showing that the applicant holds one or more of the following certifications:
 - a. Hearing interpreters: NAD III, IV, or V; RID CI, CSC, CT, IC, MCSC, RSC, SC:L, SC:PA, or TC; NIC Certified, Advanced, or Master; or BEI Levels III, IV, or V, Basic, Advanced, Master, Trilingual Advanced, Trilingual Master, CIC, or other certification deemed appropriate by the Commission;
 - b. Deaf interpreters: RID CDI, CLIP-R, or SC:L; BEI Intermediary Level III or V, CDI, or other certification deemed appropriate by the Commission; or
 - c. Oral interpreters: RID OIC or OTC, BEI OC:B or OC:C, or other certification deemed appropriate by the Commission.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-504. Application for Legal Interpreter License

A. To apply for a legal interpreter license, an applicant shall comply with R9-26-502 and submit documentation of the following:

1. Certification by RID, NAD, or BEI.
 - a. For a Class A legal interpreter license, RID SC:L, BEI CIC, or other legal specialist certification deemed appropriate by the Commission is required;
 - b. For a Class C legal interpreter license, NIC Certified, Advanced, or Master, NAD III, IV, or V, CI, CT, or CSC, or BEI Levels IV or V, Advanced, Master, Trilingual Advanced or Master, or other certification deemed appropriate by the Commission is required; and
 - c. For a Class D legal interpreter license, RID CDI, CLIP-R, OIC, or OTC or BEI OC:B, OC:C, Intermediary Levels III or V, or CDI, or other certification deemed appropriate by the Commission is required;
2. Hours of paid interpreting after initial certification by RID, NAD, or BEI.
 - a. For a Class C legal interpreter license, 10,000 hours are required; and
 - b. For a Class D legal interpreter license, 500 hours are required;
3. Hours of legal training. For a Class C or Class D legal interpreter, 50 hours obtained during the five years before the date of application are required.

B. The Commission shall accept the following documentation:

1. RID, NAD, or BEI certification.
 - a. A photocopy of current documentation provided by RID, NAD, or BEI. If an applicant's documentation expires during the application process, the Commission shall not complete the licensure process until the applicant submits current documentation of certification; and
 - b. A photocopy of the certificate provided by RID, NAD, or BEI or a copy of the letter received from RID, NAD, or BEI at the time of initial certification;
2. Hours of paid interpreting.
 - a. An applicant shall submit an affidavit affirming that the applicant provided the number of hours of paid interpreting required under subsection (A)(2) after initial certification by RID, NAD, or BEI; and
 - b. Within the time provided under R9-26-509(F) and upon receipt of a comprehensive written request for documentation of the hours of paid interpreting provided, an applicant shall submit evidence that demonstrates the truthfulness of the affirmation provided under subsection (B)(2)(a).
3. Hours of legal training. A photocopy of documentation from the organization providing the legal training that includes the information required under R9-26-510 (B).

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-505. Application for Provisional Interpreter License

A. To apply for a provisional interpreter license, an applicant shall comply with R9-26-502 and submit documentation of the following:

1. Education. The following hours of participation in an interpreter-preparation training program offered by an accredited college or university or approved by RID, NAD, or BEI:
 - a. Class A or D provisional license: 40 hours; and
 - b. Class B or C provisional license: 80 hours;
2. Examination. Pass the written portion of the RID, NAD, or BEI examination; and
3. Work experience. The following hours of interpreting for which a license is not required under A.R.S. § 36-1971:
 - a. Class A provisional license: 24 hours;
 - i. A score of at least 4.0 on the EIPA performance test;
 - ii. ACCI certification; or
 - iii. A state-issued certification or certificate of competency in good standing;
 - c. Class C provisional license: 80 hours; and
 - d. Class D provisional license: 40 hours.

B. In addition to the documentation required under subsection (A), an applicant for a Class B provisional license shall:

1. Have a letter submitted directly to the Commission by an individual licensed under R9-26-503 or R9-26-504 indicating that the individual agrees to:
 - a. Act as a mentor to the applicant if the applicant is granted a provisional license;
 - b. Observe the provisional licensee providing interpreting services at least once each month;
 - c. Provide feedback to the provisional licensee following each observation; and
 - d. Provide 30-days' notice to the provisional licensee and the Commission before terminating the mentoring relationship; and
 2. Submit a letter to the Commission indicating that if the applicant is issued a provisional license, the applicant agrees to:
 - a. Make and maintain a record of each time the mentor observes the applicant and a summary of the feedback provided;
 - b. Make the record maintained under subsection (B)(2)(a) available to the Commission annually at license renewal; and
 - c. Provide 30 days' notice to the Commission and the mentor before terminating the mentoring relationship; or
 3. Submit a letter to the Commission indicating that if the applicant is issued a provisional license, the applicant agrees to:
 - a. Team with an individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b) for at least eight hours each month;
 - b. Maintain a journal that records the dates on which and the name of the licensee with whom teaming was done and a summary of any feedback provided; and
 - c. Make the journal maintained under subsection (B)(3)(b) available to the Commission annually upon license renewal.
- C. The Commission shall accept the following documentation of the criteria in subsection (A):**
1. Education. A photocopy of documents showing that the applicant completed the hours required under subsection (A)(1);
 2. Examination. A photocopy of the letter provided by RID, NAD, or BEI indicating that the applicant passed the written portion of the RID, NAD, or BEI examination;
 3. Work experience.
 - a. One or more letters, each of which is signed by an individual or a representative of an entity for whom the applicant provided interpreting, indicating:
 - i. The name of the applicant,
 - ii. The dates on which interpreting was provided, and
 - iii. The hours of interpreting provided by the applicant; or
 - b. One or more paystubs, each of which indicates:
 - i. The name of the applicant,
 - ii. The job title of the applicant,
 - iii. The dates on which interpreting was provided by the applicant, and
 - iv. The hours of interpreting provided by the applicant, and
 - c. For an applicant for a Class B provisional license:
 - i. A photocopy of the letter provided by EIPA indicating the applicant's score on the EIPA performance test,
 - ii. A photocopy of the applicant's ACCI certificate, or
 - iii. A photocopy of the applicant's state-issued certification or certificate of competency in good standing.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 35, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-506. Short-term Registration of an Interpreter

- A.** To register with the Commission to provide interpreting in Arizona in a non-legal situation for fewer than 20 days in a year, an interpreter shall submit the following information in writing to the Commission:
 1. Interpreter's name;
 2. Interpreter's residential and e-mail addresses;
 3. Interpreter's mobile telephone number;
 4. Dates on which interpreting will be provided;
 5. Name, address, and contact information of the person or event for which interpreting services will be provided; and
 6. Date of most recent short-term registration with the Commission, if any.
- B.** In addition to complying with subsection (A), the interpreter shall submit a copy of current documentation from RID, NAD, or BEI showing the interpreter's certification is in good standing or a copy of the interpreter's license from another state's interpreter licensing authority.
- C.** An interpreter who makes application under subsections (A) and (B) for a short-term registration shall not provide interpreting services in Arizona until the Commission provides notice the registration has been granted.
- D.** Within five days after providing interpreting services under a short-term registration, the interpreter shall submit a report to the Commission that provides the dates on and persons or events for which interpreting services were provided.
- E.** The Commission shall not issue more than two short-term registrations to an interpreter during the interpreter's lifetime.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-507. License Renewal

- A.** Renewal of a generalist or legal interpreter license.
 1. A generalist or legal interpreter license expires one year after the license is issued. To continue to practice as a generalist or legal interpreter, the licensee shall, no more than 60 days before the expiration date, submit to the Commission a license renewal application form that provides the following information about the licensee:
 - a. Full name;
 - b. Social Security number;
 - c. Home or business address;
 - d. E-mail address;
 - e. Home, business, or mobile telephone number;

- f. The start and end dates of the applicant's current certification cycle with RID, NAD, or BEI, as applicable;
 - g. Name of any state or country in which the licensee is currently licensed or certified to practice as an interpreter, the license or certificate number, date issued and date of expiration, and a statement whether the license or certificate is or has been the subject of discipline during the previous year and if the answer is yes, a complete explanation of the discipline including date, nature of complaint, and discipline imposed;
 - h. A statement of whether the licensee has been denied a license or certificate to practice as an interpreter by a licensing authority during the previous year and if the answer is yes, a complete explanation of the denial including date, name of the interpreter licensing authority, and reason for denial;
 - i. A statement of whether the licensee has been convicted of a felony or of an offense involving moral turpitude in this or any other jurisdiction during the previous year and if the answer is yes, a complete explanation of the charge and place and date of conviction;
 - j. A statement of whether the licensee has been adjudicated insane or incompetent during the previous year and if the answer is yes, a complete explanation including date and place of adjudication;
 - k. A statement of whether the applicant's NAD, RID, or BEI certification lapsed during the previous year and if so, a complete explanation including date of and reason for the lapse;
 - l. A statement of whether the applicant's interpreter license from Arizona or another jurisdiction lapsed during the previous year and if so, a complete explanation including date of and reason for the lapse;
 - m. A statement of whether the applicant's interpreter license from Arizona or another jurisdiction was subject to a complaint during the previous year and if so, a complete explanation including date, allegation, and discipline imposed, if any;
 - n. A statement of whether the applicant's NAD, RID, or BEI certification was subject to a complaint during the previous year and if so, a complete explanation including date, allegation, and discipline imposed, if any, and if discipline was imposed, a statement of whether the notice required under R9-26-518 was submitted to the Commission;
 - o. A statement of whether the applicant completed any continuing education during the previous year and if so, the number of hours completed; and
 - p. A statement signed by the licensee verifying the truthfulness of the information provided and affirming that the licensee will comply with the NAD-RID Code of Professional Conduct.
2. In addition to the license renewal application form required under subsection (A)(1), the generalist or legal licensee shall submit or have submitted on the licensee's behalf:
 - a. A photocopy of current documentation showing the applicant's NAD, RID, or BEI certification is in good standing. If the licensee's documentation expires during the renewal process, the Commission shall not complete the license renewal process until the licensee submits a photocopy of current documentation;
 - b. If the answer to any item in subsections (A)(1)(g) through (A)(1)(m) is yes, a copy of any relevant order; and
 - c. The fee required under R9-26-508.
 3. If a generalist or legal licensee fails to comply with subsections (A)(1) and (A)(2) on or before the license expiration date, the license expires. The former licensee may renew the expired license by complying with subsections (A)(1) and (A)(2), and paying the penalty prescribed under R9-26-508 no later than 30 days after the license expired. If a former licensee fails to renew an expired license within the 30 days provided in this subsection, the former licensee shall stop providing interpreting for which a license is required under A.R.S. § 36-1971.
 4. If an expired license is not renewed under subsection (A)(3), the former licensee may obtain a license only by applying as a new applicant.
- B. Renewal of a provisional interpreter license.**
1. A provisional interpreter license expires one year after the date of issuance.
 2. To continue to practice as a provisional interpreter, the licensee shall, no more than 60 days before the expiration date, submit to the Commission a license renewal application form that provides the information specified under subsection (A)(1).
 3. In addition to the license renewal application form required under subsection (B)(2), the provisional licensee shall submit or have submitted on the licensee's behalf:
 - a. If the answer to any item in subsections (A)(1)(h) through (A)(1)(m) is yes, a copy of any relevant order;
 - b. Documentation required under R9-26-510(C) that demonstrates compliance with the continuing education requirement in R9-26-510; and
 - c. The fee required under R9-26-508;
 - d. If a Class B provisional licensee wishes to renew the Class B provisional license, letters that meet the standards at R9-26-505(B)(1) and (2) or a letter that meets the standards at R9-26-505(B)(3); and
 - e. If a Class C provisional licensee wishes to renew the Class C provisional license, an affirmation that the licensee has provided and will continue to provide interpreting services only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b); or
 - f. If a Class C provisional licensee wishes to move to a Class B provisional license:
 - i. Letters that meet the standards at R9-26-505(B)(1) and (2) or a letter that meets the standards at R9-26-505(B)(3), and
 - ii. Evidence required under R9-26-505(C)(3)(a) or (b) showing at least 500 hours of work experience earned while working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b), or
 - iii. A score of at least 4.0 on the EIPA performance test.
 4. If a provisional licensee fails to comply with subsections (B)(2) and (3) on or before the license expiration date, the license expires. Unless the expired provisional license has previously been renewed under subsections (B)(2) and (3), the former licensee may renew the expired license by complying with subsections (B)(2) and (3) and paying the penalty prescribed under R9-26-508 no later than 30 days after the license expired. If a former licensee fails to renew an expired license within the 30 days provided in this subsection, the former licensee shall stop providing interpreting for which a license is required under A.R.S. § 36-1971.
 5. The Commission shall not issue a provisional interpreter license to an interpreter for more than five years over the interpreter's lifetime except that if an interpreter is unable to pursue RID, NAD, or BEI certification because the testing necessary for certification is unavailable due to the COVID-19 pandemic, the Commission shall renew the provisional interpreter license of any interpreter who:
 - a. Complies fully with this subsection;
 - b. Held a valid provisional interpreter license in its final renewal year on December 30, 2020; and
 - c. Obtains certification by RID, NAD, or BEI no later than the interpreter's renewal date, as specified in subsection (B)(1), in 2023.

- C. If the documentation previously submitted under R9-26-502(B)(4) was a limited form of work authorization issued by the federal government, an applicant for license renewal shall submit evidence that the work authorization has not expired.
- D. The Commission shall require a licensee to submit the information required under R9-26-502(B)(5) every five years so an updated photograph is used in the identification badge required under R9-26-515.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2). Section R9-26-507 amended by emergency rulemaking at 27 A.A.R. 549, with an immediate effective date of March 31, 2021; valid for 180 days under A.R.S. § 41-1026 (D) (Supp. 21-1). Section amended by final rulemaking at 27 A.A.R. 1257, with an immediate effective date of August 4, 2021 (Supp. 21-3).

R9-26-508. Fees and Charges

- A. Under the authority provided by A.R.S. §§ 36-1973(A) and 36-1974(C), the Commission establishes and shall collect the following fees, which are not refundable unless A.R.S. § 41-1077 applies:
 1. Generalist or legal license application fee, \$125;
 2. Generalist or legal license renewal application fee, \$50;
 3. Provisional license application fee, \$25;
 4. Provisional license renewal application fee, \$25; and
 5. Penalty for late license renewal, \$100
- B. The Commission shall charge \$25 to:
 1. Replace an identification badge,
 2. Issue a duplicate license.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-509. Procedures for Processing Applications; Time Frames

- A. For the purpose of A.R.S. § 41-1073, the Commission establishes the following licensing time frames:
 1. Administrative completeness review time frame: 30 days;
 2. Substantive review time frame: 60 days; and
 3. Overall time frame: 90 days.
- B. The administrative completeness review time frame listed in subsection (A)(1) begins on the date the Commission receives a license application or license renewal application. During the administrative completeness review time frame, the Commission shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the Commission shall specify in the notice what information is missing.
- C. An applicant with an incomplete application shall supply the missing information within 30 days from the date of the notice. Both the administrative completeness review and overall time frames are suspended from the date of the Commission's notice until the date that the Commission's office receives all missing information.
- D. Upon receipt of all missing information, the Commission shall notify the applicant that the application is complete. The Commission shall not send a separate notice of completeness if the Commission grants or denies a license within the administrative completeness review time frame in subsection (A)(1).
- E. The substantive review time frame listed in subsection (A)(2) begins on the date of the Commission's notice of administrative completeness or on expiration of the time listed in subsection (A)(1).
- F. If the Commission determines during the substantive review time frame that additional information is needed, the Commission shall send the applicant a comprehensive written request for the additional information. The applicant shall supply the additional information within 60 days from the date of the request. Both the substantive review and overall time frames are suspended from the date on the Commission's request until the date the Commission office receives the additional information.
- G. If an applicant needs additional time in which to respond under subsection (C) or (F), the applicant shall submit a written notice of extension to the Commission before expiration of the time to respond that includes the date by which the applicant will submit the information. The applicant shall establish an extension date that is no more than 120 days from the date established under subsection (C) or (F).
- H. If an applicant fails to submit information within the time provided under subsection (C) or (F) or as extended under subsection (G), the Commission shall close the applicant's file. An applicant whose file is closed and who later wishes to be licensed, shall apply anew.
- I. Within the time listed in subsection (A)(3), the Commission shall:
 1. Grant a license to an applicant who meets the requirements in A.R.S. § 36-1973 and this Article, or
 2. Deny a license to an applicant who does not meet the requirements in A.R.S. § 36-1973 or this Article.
- J. If the Commission denies a license, the Commission shall send the applicant a written notice explaining:
 1. The reason for the denial with citations to supporting statutes or rules,
 2. The applicant's right to appeal the denial and have a hearing,
 3. The time for appealing the denial, and
 4. The applicant's right to request an informal settlement conference.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-510. Continuing Education Requirement; Waiver; Extension of Time to Complete

- A. Continuing education is required as a condition of licensure renewal.
 1. A generalist interpreter shall complete continuing education required by NAD, RID, or BEI to maintain certification by NAD, RID, or BEI. If the certification of a generalist interpreter is suspended or revoked by NAD, RID, or BEI because the generalist interpreter failed to complete the required continuing education, the Commission shall initiate proceedings under Article 3 against the generalist interpreter's license.

2. A Class A legal interpreter shall complete continuing education required by NAD, RID, or BEI to maintain legal certification by NAD, RID, or BEI. If the certification of a Class A legal interpreter is suspended or revoked by NAD, RID, or BEI because the Class A legal interpreter failed to complete the required continuing education, the Commission shall initiate proceedings under Article 3 against the legal interpreter's license.
 3. A Class C or D legal interpreter shall complete continuing education required by NAD, RID, or BEI to maintain certification by NAD, RID, or BEI including at least 20 hours of legal training. If the certification of a Class C or D legal interpreter is suspended or revoked by NAD, RID, or BEI because the Class C or D legal interpreter failed to complete the required continuing education or if the Class C or D legal interpreter fails to complete the required hours of legal training, the Commission shall initiate proceedings under Article 3 against the legal interpreter's license.
 4. When renewing a license under R9-26-507(B), a provisional interpreter shall submit the evidence required under subsection (B) showing completion of 12 hours of continuing education. The Commission shall accept continuing education:
 - a. Designed to enhance the provisional licensee's skill and ability to provide quality interpreting to the deaf and hard-of-hearing community;
 - b. Approved by RID, NAD, or BEI, as applicable, for certification maintenance;
 - c. Provided by an accredited institution of higher education; or
 - d. Provided by an entity involved with the deaf and hard-of-hearing community; and
- B.** A provisional licensee shall obtain from the provider of a continuing education attended by the licensee documentation that includes:
1. Licensee's name,
 2. Name of the continuing education provider,
 3. Name of the continuing education,
 4. Number of hours of attendance, and
 5. Date of the continuing education.
- C.** Waiver of continuing education requirement.
1. To obtain a waiver of the continuing education requirement, a provisional licensee shall submit to the Commission a written request that includes the following:
 - a. The period for which the waiver is requested,
 - b. Continuing education completed during the current license year and the documentation required under subsection (B), and
 - c. Reason a waiver is needed and supporting documentation:
 - i. For military service. A copy of current orders or a letter on official letterhead from the licensee's commanding officer;
 - ii. For absence from the United States. A copy of pages from the licensee's passport showing exit and reentry dates;
 - iii. For disability. A letter from the licensee's treating physician stating the nature of the disability; and
 - iv. For circumstances beyond the licensee's control. A letter from the licensee stating the nature of the circumstances and documentation that provides evidence of the circumstances.
 2. The Commission shall grant a request for waiver of the continuing education requirement that:
 - a. Is based on a reason listed in subsection (C)(1)(c),
 - b. Is supported by the required documentation,
 - c. Is submitted no sooner than 60 days before and no later than the license expiration date, and
 - d. Will promote the safe and professional practice of interpreting in this state.
- D.** Extension of time to complete continuing education requirement.
1. To obtain an extension of time to complete the continuing education requirement, a provisional licensee shall submit to the Commission a written request that includes the following:
 - a. Ending date of the requested extension,
 - b. Continuing education completed during the current license year and the documentation required under subsection (B),
 - c. Proof of registration for additional continuing education that is sufficient to enable the provisional licensee to complete all continuing education required for license renewal before the end of the requested extension, and
 - d. Licensee's attestation that the continuing education obtained under the extension will be reported only to fulfill the current license renewal requirement and will not be reported on a subsequent license renewal application.
 2. The Commission shall grant a request for an extension that:
 - a. Specifies an ending date no more than three months from the current license expiration date,
 - b. Includes the required documentation and attestation,
 - c. Is submitted no sooner than 60 days before and no later than the license expiration date, and
 - d. Will promote the safe and professional practice of interpreting in this state.
- E.** Except as provided in subsection (D), a provisional licensee shall report only hours of continuing education obtained during the license year immediately preceding license renewal. A licensee shall not carry over hours in excess of those required under subsection (A)(4) to a subsequent license year.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-511. Video Remote Interpreting

- A.** An interpreter who is licensed under A.R.S. Title 36, Chapter 17.1 and this Article is authorized to provide VRI only for individuals who are located in Arizona.
- B.** An interpreter who is licensed under A.R.S. Title 36, Chapter 17.1 and this Article and provides VRI shall comply fully with the requirements of this Article.
- C.** An interpreter who is located outside of Arizona shall not provide VRI for an individual located in Arizona before being licensed under A.R.S. Title 36, Chapter 17.1 and this Article.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Section repealed; new Section made by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-512. Renumbered

Historical Note

New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Section R9-26-512 renumbered to R9-26-301 by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-513. Reserved

R9-26-514. Reserved

R9-26-515. Identification Badge Required

- A. To protect the public, a licensee shall have and present on request, an identification badge issued by the Commission whenever the licensee provides interpreting services.
- B. A licensee who loses or damages the identification badge required under subsection (A) may obtain a replacement identification badge by submitting a request to the Commission and paying the charge specified under R9-26-508.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Section R9-26-515 renumbered to R9-26-302; new Section R9-26-515 made by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-516. Renumbered

Historical Note

New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Section renumbered to R9-26-303 by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-517. Renumbered

Historical Note

New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Section renumbered to R9-26-304 by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

R9-26-518. Required Notices to the Commission

- A. If a licensee's certification by RID, NAD, BEI, or other acceptable certifying entity is suspended, revoked, or subject to other disciplinary action by RID, NAD, BEI, or the other acceptable certifying entity, the licensee shall provide immediate written notice of the disciplinary action to the Commission. Failure to provide the notice required under this subsection is unprofessional conduct.
- B. If a licensee's state-issued certification submitted as qualification for a Class B provisional license is suspended, revoked, or subject to other disciplinary action by the state that issued the certification, the licensee shall provide immediate written notice of the disciplinary action to the Commission. Failure to provide the notice required under this subsection is unprofessional conduct.
- C. The Commission shall communicate with a licensee or applicant using the name and address provided to the Commission by the licensee or applicant. To ensure timely receipt of communication from the Commission, a licensee or applicant shall notify the Commission of any change in the licensee's or applicant's name or address.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2). Amended by final rulemaking at 22 A.A.R. 1675, effective August 15, 2016 (Supp. 16-2).

As of May 14, 2022

36-1941. Definitions

In this chapter, unless the context otherwise requires:

1. "Commission" means the commission for the deaf and the hard of hearing.
2. "Deaf" means a person who cannot generally understand speech sounds with or without a hearing aid when in optimal listening conditions.
3. "Deafblind" means a person who is deaf or hard of hearing, who has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual field subtends an angular distance not greater than twenty degrees, or a progressive visual loss having a prognosis leading to one or both of these conditions, and for whom the combination of the hearing and vision loss described affects the person's ability to communicate and receive environmental information both visually and auditorily.
4. "Hard of hearing" means a person who has a degree of hearing loss greater than 40dB PTA-2, but less than 85dB PTA-2, in the better ear.
5. "Interpreting" means translating or transliterating English concepts to any necessary specialized vocabulary used by a consumer or translating a consumer specialized vocabulary to English concepts.
6. "Necessary specialized vocabulary" includes American sign language, English based sign language, cued speech and oral interpreting.
7. "PTA-2" means the average of hearing levels at one thousand, two thousand and four thousand Hz.

36-1942. Commission for the deaf and the hard of hearing

A. The commission for the deaf and the hard of hearing is established consisting of the following members appointed by the governor:

1. One member who is selected from the department of economic security.
2. One member who is selected from the Arizona state schools for the deaf and the blind at Tucson or the Phoenix day school for the deaf.
3. One member who is a dispensing clinical audiologist licensed pursuant to chapter 17 of this title.
4. One member who is a hearing aid dispenser licensed pursuant to chapter 17 of this title.
5. Four members who are deaf persons.

6. One member who is a licensed sign language interpreter.

7. One member who is a parent of a deaf person.

8. Four members who are hard of hearing.

B. Commission members serve three years and may be reappointed once. The governor may remove a commission member for cause.

C. The commission shall meet at least four times a year at the call of the chairman, who shall be selected by the commission from among its membership.

D. Members of the commission are not eligible to receive compensation but are eligible to receive reimbursement of expenses pursuant to title 38, chapter 4, article 2.

36-1943. Executive director; duties

A. Subject to title 41, chapter 4, article 4, the commission shall appoint an executive director who serves at the pleasure of the commission. Subject to title 41, chapter 4, article 4, the commission may employ other employees as necessary, determine their compensation pursuant to section 38-611 and prescribe their powers and duties. With the approval of the commission, the executive director may contract for professional, technical and clerical services necessary to carry out functions of the commission.

B. The executive director shall be a trained professional experienced in problems of the deaf and the hard of hearing and skilled in the use of manual communication, commonly referred to as sign language, and may be either a deaf person, a person who is hard of hearing or a person with normal hearing. The executive director shall assist the commission to implement its programs and activities and to implement this chapter. The executive director shall not be a commission member. The executive director is eligible to receive compensation set by the commission within the range determined pursuant to section 38-611.

36-1944. Duties

The commission shall act as a bureau of information to the deaf, the hard of hearing and the deafblind, state agencies and institutions providing services to the deaf, the hard of hearing and the deafblind, local agencies of government and other public or private community agencies and programs. In this capacity, the commission shall:

1. Inform the deaf, the hard of hearing and the deafblind of the availability of the programs and activities of the commission and other services available for the deaf, the hard of hearing and the deafblind at all levels of government.

2. Develop and foster a framework for consultation and cooperation with the rehabilitation services bureau of the department of economic security and with all institutions represented on the commission.

3. Study issues relating to the deaf, the hard of hearing and the deafblind, review the administration and operation of the various programs for the deaf, the hard of hearing and the deafblind in this state and make recommendations concerning these problems and programs to the several agencies and institutions represented on the commission as it deems necessary.

4. Submit an annual report to the governor and the legislature concerning its findings and recommendations.

5. Review the problems of the deaf, the hard of hearing and the deafblind as they relate to the need for effective and appropriate auxiliary aids in public places.

6. Review and compile information on the development of acoustical technology for the hard of hearing and advocate the use of this technology if it deems appropriate.

7. Make recommendations to state agencies, political subdivisions and institutions on how to meet the needs of the deaf, the hard of hearing and the deafblind.

8. Make recommendations to the legislature regarding statutory changes needed:

(a) To develop and support statewide newborn child hearing loss screening programs.

(b) To develop and update assessment standards that optimize the language acquisition and literacy development of deaf and hard of hearing newborns, infants and children.

36-1945. Commission for the deaf and the hard of hearing fund; gifts and donations; annual report

A. The commission for the deaf and the hard of hearing fund is established consisting of fees, penalties and any legislative appropriations. The commission shall administer the fund. Monies in the fund are subject to legislative appropriation.

B. The commission may accept and spend federal monies and private grants, gifts, contributions and devises to assist in carrying out the purposes of this chapter. These monies do not revert to the state general fund at the end of a fiscal year.

C. The commission shall submit an annual report to the governor on all monies accepted by the commission pursuant to subsection B, the names of the donors and the respective amounts contributed and the amount of all disbursements from the fund.

36-1946. Interpreters for the deaf and the hard of hearing; certification; licensure

The commission shall:

1. Adopt rules necessary to achieve the purposes of section 12-242.

2. By rule, classify interpreters for the deaf and the hard of hearing based on the level of interpreting skills acquired by that person.
3. By rule, establish standards and procedures for the qualification and licensure of each classification of interpreters.
4. Help establish partnerships with colleges and universities in this state to provide interpreter and support service provider training and degree programs.
5. By rule, establish standards and procedures to certify sign language teachers to teach American sign language.
6. Beginning on September 1, 2007, license interpreters for the deaf and the hard of hearing pursuant to article 2 of this chapter

36-1947. Telecommunication devices for the deaf and the hearing and speech impaired; fund

- A. The commission shall establish and administer a statewide program to purchase, repair and distribute telecommunication devices to residents of this state who are deaf or severely hearing or speech impaired and establish a dual party relay system making all phases of public telephone service available to persons who are deaf or severely hearing or speech impaired.
- B. The commission may adopt administrative procedures, rules, criteria and forms to establish and administer the telecommunication device program under this section.
- C. Telecommunication devices furnished by the commission under this section remain the property of this state. A person who receives a telecommunication device from the commission under this section is liable for the loss of or damage to the device. The commission may impose a civil penalty against the person in an amount equal to the cost of the device or the amount of damage done to the device. If a person objects to the imposition of a civil penalty, the commission shall conduct a hearing as prescribed in title 41, chapter 6, article 10. Monies collected by the commission under this subsection shall be deposited in the telecommunication fund for the deaf established by subsection D of this section.
- D. The telecommunication fund for the deaf is established. The commission shall administer the fund. Monies in the fund shall be derived from the telecommunication services excise tax revenues distributed pursuant to section 42-5252, subsection B. Interest accruing to the fund shall be deposited in the fund. Monies in the fund are exempt from section 35-190 relating to lapsing of appropriations. Subject to legislative appropriation, the commission shall use fund monies to purchase and repair telecommunication devices, to administer the program established by this section and for the operating costs of the commission.

36-1971. Licensure; acts and persons not affected

A. A person shall not practice as an interpreter for the deaf and the hard of hearing without a license issued pursuant to this article. The licensure requirements of this article also apply to interpreters who provide services for legal proceedings as prescribed in section 12-242.

B. The commission by rule shall prescribe education, examination and work history requirements for the following three categories of licenses:

1. Legal.
2. Generalist.
3. Provisional.

C. This article does not apply to:

1. An interpreter who works in this state for less than twenty days if that person registers with the commission to provide interpreting services in nonlegal situations.
2. An interpreter who provides interpreting services at religious activities.
3. An interpreter who provides interpreting services on an emergency basis if the delay necessary to obtain a licensed interpreter is likely to cause injury or loss to the consumer.
4. An interpreter who works without compensation in nonlegal situations.
5. An interpreter who works in a school in this state pursuant to the individual education plan of a deaf or hard of hearing pupil. The qualifications of an interpreter working in a school in this state shall be determined by the individualized education program team. A school district shall inform a parent or guardian of a deaf or hard of hearing pupil of the parent or guardian's right to request a licensed interpreter.
6. Activities and services of an interpreter intern or student in training if both of the following are true:
 - (a) The interpreter is enrolled in a program of study in interpreting at an accredited institution of higher learning.
 - (b) The interpreter works under the supervision of a person licensed pursuant to this article as part of a supervised program of study and is identified to all consumers as an interpreter intern or student in training.

36-1972. Use of title; prohibited acts; violation; classification

A. A person who is not licensed pursuant to this article shall not:

1. Use any title, abbreviation, words, letters, signs or figures to indicate that the person is licensed pursuant to this chapter.

2. Practice as an interpreter for the deaf and the hard of hearing.

3. Use another person's license.

B. A person who violates this section is guilty of a class 2 misdemeanor.

36-1973. Qualifications for licensure

A. To receive a license to practice as an interpreter pursuant to this article a person shall submit an application and application fee as prescribed by the commission.

B. The applicant shall document to the commission's satisfaction that the applicant has successfully completed the education, examination and work history requirements for the specific category of license for which the licensee is applying.

36-1974. Issuance and renewal of license; continuing education

A. The executive director shall issue a license if the applicant has satisfied all of the requirements for licensure under this article.

B. A license issued pursuant to this article is subject to renewal one year after the date it was issued and terminates thirty days after the renewal date unless it is renewed.

C. Each licensee shall renew the license not earlier than sixty days before and not later than thirty days after the license expires by submitting the renewal fee and a completed renewal form. A licensee who does not renew a license as required by this article must also pay a penalty fee as prescribed by the commission for late renewal. A person who practices interpreting in this state after that person's license has expired is in violation of this article.

D. A person whose license terminates shall submit an application and application fee as an original applicant for licensure.

E. The commission by rule may prescribe continuing education requirements as a condition of license renewal.

36-1975. Denial of licensure

The commission may refuse to issue or renew a license if the commission finds that any of the following is true:

1. The applicant committed fraud or misrepresentation in applying for a license in this state or another state.

2. The applicant was convicted of a felony offense or any other offense involving moral turpitude.
3. The applicant does not meet minimum qualifications as prescribed by this article.
4. The applicant was adjudicated insane or incompetent.
5. The applicant engaged in fraud, dishonesty or corruption on a certification examination in another state.

36-1976. Revocation or suspension of license

A. The commission may revoke or suspend a license issued under this article, place a licensee on probation, issue a reprimand or impose a civil penalty for any of the following reasons:

1. Unprofessional conduct.
2. A violation of this article.
3. Gross negligence or incompetence in the performance of duties.
4. Fraud, dishonesty or corruption.
5. Inability to perform the duties of an interpreter at a level of skill that is required by the commission.
6. Conviction of a felony offense or any other offense involving moral turpitude.
7. Failing to meet minimum qualifications as prescribed by this article.
8. Adjudication of insanity or incompetency.

B. Before it takes disciplinary action pursuant to this section, the commission shall give a licensee notice and an opportunity for a hearing pursuant to its rules.

C. The commission may issue subpoenas, examine witnesses and administer oaths pursuant to a hearing held under this section.

36-1977. Right to examine and copy evidence

In connection with a commission investigation conducted pursuant to section 36-1976, the commission at all reasonable times has the right to examine and copy any documents, reports, records or other physical evidence of any person being investigated or reports, records and any other documents maintained by and in the possession of any public or private agency if the commission believes this information is related to unprofessional conduct or the mental or physical ability of a licensee to practice pursuant to this article.

36-1978. Injunctive relief; bond; service of process

A. In addition to all other available remedies, if the commission has any reason to believe that a person has violated this article or a commission rule, the commission through the attorney general or the county attorney of the county in which the violation is alleged to have occurred may apply to the superior court in that county for an injunction restraining that person from engaging in the violation.

B. The court shall issue a temporary restraining order, a preliminary injunction or a permanent injunction without requiring the commission to post a bond.

C. Service of process may be on the defendant in any county of this state where the defendant is found.

12-242. Interpreters for deaf persons; proceedings; definitions

A. The court shall in any civil or criminal case or grand jury proceeding in which a deaf person is party to such action, either as a witness, complainant, defendant or attorney, appoint a qualified interpreter to interpret the proceedings to the deaf person, to interpret the deaf person's testimony or statements and to interpret preparations with the deaf person's attorney.

B. A department, board, commission, agency or licensing authority of this state or a political subdivision of this state shall, in any proceeding before such department, board, commission, agency or licensing authority in which a deaf person is a principal party of interest or witness, appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret the deaf person's testimony or statements.

C. If a person known or ascertained to be deaf is arrested and taken into custody for any alleged violation of a criminal law of this state, the arresting officer, the officer's superiors or the court shall procure a qualified interpreter in order to properly interpret any of the following:

1. Warnings of the person's constitutional privilege against self-incrimination as it relates to custodial interrogation.
2. Interrogation of the deaf person.
3. The deaf person's statements.

D. If a juvenile whose parent or parents are deaf is brought before a court for any reason, the court shall appoint a qualified interpreter to interpret the proceedings and testimony for the deaf parent or parents and to interpret any statements or testimony the deaf parent or parents may be called upon to give to the court.

E. If a communication made by a deaf person through an interpreter is privileged, the privilege extends also to the interpreter.

F. If the interpreter or the deaf person determines that effective communication is not occurring the court or appointing authority shall permit the interpreter or the deaf person to nominate a qualified intermediary interpreter to provide interpreting services between the deaf person and the appointed interpreter during proceedings.

G. A deaf person entitled to the services of an interpreter under this section may knowingly and intelligently waive these services. A deaf person who has waived an interpreter under this subsection may provide an interpreter at the deaf person's own expense.

H. As used in this section:

1. "Deaf person" means a person whose hearing impairment is so significant that the individual is impaired in processing linguistic information through hearing.

2. "Qualified interpreter" means a person who has a valid license of competency authorized by the commission for the deaf and the hard of hearing.

DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS

Title 8, Chapter 2, Articles 1-3



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 4, 2022

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

FROM: Council Staff

DATE: September 20, 2022

SUBJECT: DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS
Title 8, Chapter 2, Articles 1, 3

Summary

This Five-Year Review Report (5YRR) from the Department of Emergency and Military Affairs (DEMA) relates to five (5) rules in Title 8, Chapter 2, Article 1 (Search and Rescue) and twenty (20) rules in Title 8, Chapter 2, Article 3 (Governor's Emergency Fund). The rules in Article 1 provide for the coordination of state resources to support search and rescue operations, including reimbursement procedures. The rules in Article 3 establish a process for requesting state assistance through a Governor's state of emergency declaration.

In the previous 5YRR for these rules, which was submitted in September 2017, DEMA indicated that it intended to pursue a course of action similar to the current proposed course of action. However, this initial course of action was not completed due to staff turnover and response needs to COVID-19.

Proposed Action

In Article 1, DEMA proposes to amend the rule language R8-2-103(A) and R8-2-104(A) for clarity by amending "should" to "shall" in reference to the 60-day deadline for reimbursement claim filings.

Additionally, DEMA proposes to amend various rule language in Article 3 to improve clarity and understandability, as well as ensure alignment with the Federal Emergency Management Agency's (FEMA) Public Assistance Program.

DEMA states that it plans to submit this rulemaking to the Council no later than December 2022.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes, DEMA cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department states that, as found in previous Economic Impact assessments, these rules provide a positive economic impact to the state agencies and political subdivisions by reimbursing political subdivisions and state agencies for time invested and eligible expenses incurred during a search and rescue mission.

Stakeholders include the Department, political subdivisions and state agencies involved in search and rescue or recover missions.

The Department indicates that the state's Emergency Fund authorized by A.R.S. § 35-192 was created in 1966 as the de facto insurance policy of the state. It is designed to offset the costs incurred by the state from a disaster and by a political subdivision that are beyond the ability of a state agency or political subdivision to respond, but not eliminate the responsibility of each state agency and political subdivision to be prepared for emergencies. In accordance with this intent, the Emergency Fund reimburses political subdivisions 75% of eligible costs resulting from a state declared disaster. The Search and Rescue reimbursement authorization was established in 1971 as a contingency fund within the state's Emergency Fund with the same intent by prescribing reimbursement amounts in A.R.S. § 35-192.01(A).

The present amount of the Emergency Fund is \$4 million, representing a significant increase from \$750,000 in 1971. However, because the Search and Rescue reimbursement thresholds have not been inflation-adjusted or otherwise altered since 1971, the relative share of costs associated with Search and Rescue reimbursements has decreased.

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 rules do not impose any unnecessary burdens or costs in their implementation of statute. The Department further indicates that any negligible expense incurred for claim submissions and to maintain paperwork evidence as required by State Library record retention guidance is outweighed by the benefit derived by the county sheriffs and county governments to recover expenses beyond the statutory thresholds incurred by their search and

rescue responsibilities due to various factors such as mission complexity, length, or frequency that may be hard to anticipate and therefore budget.

DEMA's proposed amendments to improve alignment with FEMA guidelines are anticipated to not only improve efficiency, but also reduce the costs associated with applications for multiple sources of assistance.

4. Has the agency received any written criticisms of the rules over the last five years?

DEMA indicates that it has not received any written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

As outlined above regarding DEMA's proposed action, DEMA has identified two (2) rules in Article 1 that could be made more clear, concise, and understandable by amending "should" to "shall."

6. Has the agency analyzed the rules' consistency with other rules and statutes?

DEMA indicates that these rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

DEMA indicates that the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

DEMA 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?

Not applicable. DEMA indicates that there is no corresponding federal law applicable to DEMA's 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. DEMA states that these rules do not require issuance of a regulatory permit, license, or agency authorization.

11. Conclusion

This 5YRR from DEMA relates to rules in Title 8, Chapter 2, Articles 1 and 3 regarding Search and Rescue and the Governor's Emergency Fund, respectively. DEMA indicates that these rules are consistent with other rules and statutes, effective, and enforced as written. However, DEMA indicates that the rules could be made more clear, concise, and understandable and intends to complete a rulemaking that addresses these issues before the end of December 2022.

Council staff recommends approval of this report.



Douglas A. Ducey
GOVERNOR

STATE OF ARIZONA
DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS

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Phoenix, Arizona 85008-3495
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Major General Kerry L. Muehlenbeck
THE ADJUTANT GENERAL

July 15, 2022

VIA EMAIL: grrc@azdoa.gov

Ms. Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: A.A.C. Title 8, Chapter 2, Articles 1 and 3 Five-Year Review Report

Dear Ms. Sornsins:

Pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, the Arizona Department of Emergency and Military Affairs (DEMA) submits the following Five-Year Review Report for A.A.C. Title 8, Chapter 2, Articles 1 and 3 to the Governor's Regulatory Review Council which is due on July 31, 2022.

Per the requirements of A.A.C. R1-6-301(B),

1. No rules were left out of this Five-Year Review Report with the intention to be expired under A.R.S. § 41-1056(J).
2. There are no rules subject to rescheduling by the Council.
3. DEMA certifies that it is in compliance with A.R.S. § 41-1091 regarding posting of substantive policy statements and rules. DEMA currently does not have a substantive policy statement.

If you have any additional questions or comments regarding this report, please contact Travis Schulte, Legislative Liaison, at (602) 267-2732 or travis.schulte@azdema.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Kerry L. Muehlenbeck".

KERRY L. MUEHLENBECK
Major General, AZANG
The Adjutant General

cc: Ms. Megan Fitzgerald, Governor's Policy Advisor for Public Safety and Military Affairs



**State of Arizona
Department of Emergency and Military Affairs**

**Governor's Regulatory Review Council
Five-Year Regulatory Review Report**

**Arizona Administrative Code
Title 8. Emergency and Military Affairs
Chapter 2. Department of Emergency and Military Affairs –
Division of Emergency Management
Articles 1 and 3**

**Submitted July 15, 2022
Revised September 14, 2022**

The Arizona Department of Emergency and Military Affairs has published rules that appear in Arizona Administrative Code Title 8, Chapter 2, Articles 1 and 3.

Pursuant to A.R.S. § 41-1056, the Arizona Department of Emergency and Military Affairs (DEMA) submits the following five-year review report.

Arizona Department of Emergency and Military Affairs
Title 8. Emergency and Military Affairs
Chapter 2. Department of Emergency and Military Affairs –
Division of Emergency Management
Article 1. Search and Rescue

OVERVIEW OF ARTICLE 1 RULES

The Arizona Department of Emergency and Military Affairs (DEMA) is a cabinet level agency that includes the Arizona National Guard (Army, Air, and Joint Task Force), the Division of Emergency Management (ADEM), and Division of Administrative Services. DEMAs authority to make rules necessary for operation of these divisions.

DEMA has published a set of rules which appear in the Arizona Administrative Code at R8-2-101 et seq. (Search and Rescue Rules) that were amended as early as July 18, 1977, and likely originally drafted following the creation of A.R.S. § 35-192.01 and the combining of the Arizona Division of Emergency Services (later renamed Arizona Division of Emergency Management) with the Arizona Department of Military Affairs to create the Arizona Department of Emergency and Military Affairs in 1972.

The Search and Rescue Rules establish guidance to support search and rescue operations of the state, coordinating the use of state resources – including reimbursement from the Governor’s Emergency Fund – or the resources of one or more political subdivisions in support of any other political subdivision in the conduct of search and rescue operations, and for providing the services of a state search and rescue coordinator. The Search and Rescue Rules were last amended in 2015 while working in conjunction with the State’s County Sheriffs to improve the reimbursement process during Search and Rescue (SAR) activities.

**Arizona Department of Emergency and Military Affairs
Title 8, Chapter 2, Article 1
Five-Year Review Report**

1. Authorization of the rule by existing statutes:

General Statutory Authority:

- A.R.S. § 26-306(A)(3) establishes the Division’s general authority to adopt rules.

Specific Statutory Authority:

- A.R.S. § 35-192(G) states “The director of the division of emergency management in the department of emergency and military affairs shall develop rules for administering the monies authorized for liabilities under this section subject to approval by the governor.”
- A.R.S. § 35-192.01(C) states “The director of emergency management shall adopt with the approval of the governor rules concerning such reimbursement.”

2. The objective of each rule:

Rule	Objective
R8-2-101	To clearly define positions and actions involved in Search and Rescue or Recover missions and to provide uniformity and understanding throughout the state, which are necessary to effectively administer the Search and Rescue Program.
R8-2-102	To outline and define the support available for search and rescue operations from the state, including the variety of equipment and personnel available upon request, to support public safety and Search and Rescue mission planning by an agency or political subdivision.
R8-2-103	To set guidelines and define procedures on expenses that may be reimbursed, define ineligible expenses, and establish procedures for obtaining reimbursement for specialized equipment and services needed in an operation to help applicants understand how to track and submit their costs and to protect state taxpayers against any fraud, waste, or abuse.
R8-2-104	To set guidelines and define procedures on expenses that may be reimbursed, define ineligible expenses, and establish procedures for obtaining reimbursement for specialized equipment and services needed in an operation to help applicants understand how to track and submit their costs and to protect state taxpayers against any fraud, waste, or abuse.
R8-2-105	To set the requirements needed for competent certification by the claimants for reimbursements submitted for a Search and Rescue mission and allow the Director to prescribe the appropriate documents that support the claim and substantiate the disbursement of taxpayer dollars from the Governor’s Emergency Fund.

3. **Are the rules effective in achieving their objectives?** Yes X No ___
 The objectives of these rules are effectively met.
4. **Are the rules consistent with other rules and statutes?** Yes X No ___
 These rules are consistent with other rules promulgated by this agency, and with the general statutory authority to adopt rules found in A.R.S. § 26-306 (A)(3), and the specific statutory authority for the program and requiring the adoption of rules to manage the program in A.R.S. §§ 35-192(G) and 35-192.01(C).
5. **Are the rules enforced as written?** Yes X No ___
 These rules are consistently and fairly enforced as written.
6. **Are the rules clear, concise, and understandable?** Yes X No ___
 The rules are generally clear, concise, and understandable. As noted in the previous Five Year Rule Review, R8-2-103(A) and R8-2-104(A) have been recommended for amending to provide clarity regarding to 60 day requirement for filing a claim. Prior to amendments in 2015, the rules required that “Claims should be submitted within 21 calendar days...” The 2015 amendment changed that to time limit to 60 days, however, the auxiliary verb “should” was not amended at that time and that has led to confusion. To improve the clarity of the rules, a request to amend “should” to “shall” in both R8-2-103 (A) and R8-2-104 (A) was submitted to the Governor’s Office for consideration but staff changes and then the state-wide response to the COVID-19 pandemic beginning in 2020 prevented formal approval and time to develop the amendment. A request to amend will be submitted to the Governor’s Office following GRRC approval of this Five-Year Review Report.
7. **Written criticisms received within the last five years?** Yes ___ No X
 The Department has not received any written criticisms of these rules over the past five years, despite the wording of the 60-day submission timeline referenced in Question 6.
8. **Economic, small business, and consumer impact comparison:**
 As found in previous Economic Impact assessments, these rules provide a positive economic impact to state agencies and political subdivisions by reimbursing political subdivisions and state agencies for time invested and eligible expenses incurred during a search and rescue mission. The state’s Emergency Fund authorized by A.R.S. § 35-192 was created in 1966 as the de facto

insurance policy of the state. It is designed to offset the costs incurred by the state from a disaster and by a political subdivision that are beyond the ability of a state agency or political subdivision to respond, but not eliminate the responsibility of each state agency and political subdivision to be prepared for emergencies. In accordance with this intent, the Emergency Fund reimburses political subdivisions 75% of eligible costs resulting from a state declared disaster.

The Search and Rescue reimbursement authorization was established in 1971 as a contingency fund within the state's Emergency Fund with the same intent by prescribing the reimbursement amounts in A.R.S. § 35-192.01(A). Search and Rescue reimbursement was never intended to fund the entire operational response by a county as it fulfilled its Search and Rescue responsibilities, but to assist the counties from unforeseen mission complexity and budget impacts incurred during Search and Rescue operations that were beyond their ability to respond and pay. The rules implement the authorized reimbursement within the limitations prescribed within A.R.S. §§ 35-192 and 192.01, as well as applicable procurement code.

The statutory reimbursement thresholds within the Search and Rescue contingency fund have remained the same since 1971, affording the counties the benefit of increased financial assistance. Note that the state Emergency Fund was \$750,000 in 1971 vs \$4,000,000 it is today, but that the SAR reimbursement thresholds have not increased since that time. Per the U.S. Bureau of Labor Statistics, \$1 in 1971 is worth approximately \$6.57 in 2021 dollars.^a If the county cost-share thresholds detailed in A.R.S. § 35-192.01(A) were tied to inflation, the adjusted county cost-share for Search and Rescue expenses would be at least \$35,750 per fiscal year today. This has provided an additional positive economic impact to county governments.

Negligible expense is incurred for claim submissions and to maintain paperwork evidence as required by State Library record retention guidance.

9. Has the agency received any business competitiveness analyses of the rules? Yes ___ No X

The Department has not received any analysis by another party comparing the impact of the rules reviewed in this report on this state's business competitiveness or to the impact on business in other states.

^a U.S. Bureau of Labor Statistics Inflation Calculator, <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=1.00&year1=197101&year2=202101>

Arizona's population in 1971 was 1.896 million, compared to an estimated population of 7.2 million in 2021.

10. Has the agency completed the course of action indicated in the agency’s previous five-year-review report?

The agency was not able to secure approval to proceed with the previous course of action identified in the previous five-year-review report due to staff changes prior to the onset of the 2020 COVID-19 pandemic. The agency plans to request approval following acceptance of this five-year-review report by GRRC.

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 do not impose any unnecessary burdens or costs in their implementation of statute. Any negligible expense incurred for claim submissions and to maintain paperwork evidence as required by State Library record retention guidance is outweighed by the benefit derived by the county sheriffs and county governments to recover expenses beyond the statutory thresholds incurred by their Search and Rescue responsibilities due to various factors such as mission complexity, length, or frequency that may be hard to anticipate and therefore budget.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No X

Not applicable. There are no federal requirements for reimbursement of state Search and Rescue activities.

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. The rules do not require issuance of a regulatory permit, license, or authorization.

14. Proposed course of action

DEMA anticipates submitting a rulemaking moratorium exemption request to the Governor’s Office following GRRC acceptance of this five-year-review report to amend R8-2-103 (A) and R8-2-104(A) to improve rule clarity regarding the 60-day requirement for filing a claim by amending “should” to “shall.” Pending receipt of approval from the Governor’s Office, DEMA plans to submit the rulemaking to Council no later than December 2022.

RULE TEXT

A.A.C. TITLE 8, CHAPTER 2

ARTICLE 1. SEARCH AND RESCUE

R8-2-101. Definitions

In this Article, for purposes of these rules, and unless the text requires otherwise:

1. "Claim" means documentation of eligible expenses associated with the conduct of a search and rescue mission.
2. "Claimant" means a department of the state or a political subdivision eligible to receive state reimbursement for search or rescue operations.
3. "Emergency Operations Center for Search and Rescue" means the State Emergency Operations Center provides coordination, communications, , administrative and support assistance. The center is located in the offices of the State Division of Emergency Management.
4. "Mission" means any action required to accomplish that portion of Title 26, Arizona Revised Statutes, relating to the preparation for and conduct of search and rescue operations.
5. "Mission coordinator" means the county sheriff, or sheriff's designee, excluding federal reservations, where agreements are nonexistent.
6. "Mission identifier" means a number assigned by the State Division of Emergency Management to identify a search and rescue mission.
7. "On-scene coordinator" means the individual Search and Rescue (SAR) Coordinator designated by the sheriff as the on-scene person in charge of a particular search and rescue mission.
8. "Political subdivision" means, within the context of this Article, a county sheriff.
9. "Recovery" means to relocate, under direction of the statutory authority, a deceased person from the site of his demise to an appropriate location.
10. "Reimbursement" means the payment of state funds in accordance with A.R.S. § 35-192.01(A) and (B).
11. "Rescue" means to render aid, under the direction of the county sheriff, to persons whose life or health is threatened by circumstances beyond their control and return them to a place of safety.
12. "Search" means to seek out and locate, by the use of air, surface, and/or subsurface equipment and qualified registered personnel, live persons known or thought to be, by the county sheriff, in a distress situation and unable to reach a place of safety by their own efforts.

Historical Note

Former Rule Part 3; Amended effective July 18, 1977 (Supp. 77-4). Amended paragraphs (1), (3) and (8) effective June 30, 1986 (Supp. 86-3). Editorial correction, paragraph (2) (Supp. 88-4). Former R8-2-01 amended and renumbered effective March 7, 1990 (Supp. 90-1). Amended by final rulemaking at 21 A.A.R. 3021, effective January 11, 2016 (Supp. 15-4).

R8-2-102. Support of Search and Rescue Operations

- A. The Director of the Division of Emergency Management, in accordance with A.R.S. Title 26, is responsible for supporting search or rescue operations of the state, coordinating the use of state resources or the resources of one or more political subdivisions in support of any other political subdivision in the conduct of search and rescue operations and for providing the services of a state search or rescue coordinator.
- B. The Division of Emergency Management shall coordinate activities to include the following:
 1. Mission identifiers for search and rescue operations.
Authorized county sheriff search and rescue coordinators may obtain Mission Numbers through the Division of Emergency Management's Search and Rescue (SAR) data collection system.
 2. State government personnel and/or equipment, including the Arizona National Guard.
 3. United States military personnel and/or equipment.
 4. Resources not readily available locally.
 5. Resources to support responsible authorities on federal reservations.
 6. Specialized personnel and/or equipment from other states.
 7. Reimbursement of eligible claims.
 8. Prescribing forms and/or procedures for acquiring mission identifiers, reporting search or rescue mission activities, claiming reimbursement of eligible expenses and similar administrative matters.

Historical Note

Former Rule Part 4A Attachment B; Former Rule Part 4 Attachment C; Former Rule Part 4 Attachment D; Amended effective June 30, 1986 (Supp. 86-3). Former R8-2-02 amended and renumbered effective March 7, 1990 (Supp. 90-1). Amended by final rulemaking at 21 A.A.R. 3021, effective January 11, 2016 (Supp. 15-4).

R8-2-103. Reimbursement to County Governments

- A. Reimbursement to county governments from the Governor's Emergency Fund is authorized for eligible expenses incurred during the conduct of search and rescue operations. A search and rescue mission, in order to qualify for reimbursement must fall within the purview of A.R.S. § 35-192(C). Claims should be submitted within 60 calendar days after the close or suspension of the mission. Eligible and ineligible expenses are itemized below:
 1. Eligible:

- a. Salaries or contracts for the services of specialized personnel, provided that prior approval has been obtained from the Director, Division of Emergency Management.
 - b. Overtime pay for eligible government employees. The claimant's overtime policy must be adhered to when submitting for overtime.
 - c. Telephone and data charges directly related to search or rescue missions.
 - d. Reimbursement of recovery expenses should the subject of an eligible search and rescue mission be found deceased. Reimbursement of recovery expenses for a suspected decedent may be authorized with the prior approval of the Director, Division of Emergency Management.
 - e. Cost of materials and supplies procured with public funds or taken from government stocks and consumed, lost, damaged or destroyed during an eligible search and rescue mission.
 - f. Rental costs of specialized equipment or aircraft, provided that the rates do not exceed the lowest rates available for the same or similar equipment. The prior approval of the Director, Division of Emergency Management is required.
 - g. Actual costs of fuel or lubricants paid by a county government for the operation of vehicles, equipment, or aircraft.
 - h. Repairs to surface/subsurface vehicles and equipment damaged during search and rescue missions. Costs are limited to the restoration of the immediate pre-mission condition.
 - i. Reimbursements will be made only for equipment specifically required for the conduct of the search and rescue mission.
2. Ineligible:
- a. Regular salaries or wages of government employees,
 - b. Salaries or wages of elected or appointed officials and employees ineligible for overtime pay,
 - c. Office supplies and equipment,
 - d. Rental of administrative office space,
 - e. Purchase of equipment or facilities,
 - f. Cost of items of personal wearing apparel,
 - g. Firearms.
- B.** The eligibility of other expenses shall be determined by the Director, Division of Emergency Management, within the scope of this guidance, on a case-by-case basis.

Historical Note

Former Rule Part 5; Amended subsections (B) and (C) effective June 30, 1986 (Supp. 86-3). Former R8-2-03 amended and renumbered effective March 7, 1990 (Supp. 90-1). Amended by final rulemaking at 21 A.A.R. 3021, effective January 11, 2016 (Supp. 15-4).

R8-2-104. Reimbursement to a Department or Agency of the State

- A.** Expenses incurred, resulting from participation in search and rescue missions, shall be borne initially by the state department or agency. Reimbursement shall be governed by A.R.S. § 35-192.01(B). Claims should be submitted within 60 calendar days after the close or suspension of a mission. Eligible and ineligible expenses are itemized below:
- 1. Eligible:
 - a. Salaries or wages of employees directly engaged in search or rescue work.
 - b. Salaries or wages of regular employees who are diverted from their normal duties to engage in search or rescue work.
 - c. Overtime pay for eligible regular employees.
 - d. Communications charges directly related to search or rescue operations.
 - e. Travel directly related to search or rescue operations.
 - f. Reimbursement of recovery expenses should the subject of an eligible search and rescue mission be found deceased. Reimbursement of recovery expenses for a suspected decedent may be authorized with the prior approval of the Director, Division of Emergency Management.
 - g. Cost of materials and supplies procured with public funds or taken from government stocks and consumed, lost, damaged or destroyed during an eligible search and rescue mission.
 - h. Rental costs of specialized equipment or aircraft, provided that the rates do not exceed the lowest rates available for the same or similar equipment. Sole source providers will be considered. The prior approval of the Director, Division of Emergency Management is required.
 - i. Actual cost of fuel or lubricants paid by a state department or agency for the operation of vehicles, equipment or aircraft.
 - j. Repairs to surface/subsurface vehicles and equipment damaged during search or rescue mission. Costs are limited to the restoration of the immediate pre-mission condition.
 - k. Reimbursements will be made only for equipment specifically required for the conduct of the search and rescue mission.
 - 2. Ineligible:
 - a. Salaries or wages of elected or appointed officials ,
 - b. Office supplies and equipment,
 - c. Rental of administrative office space,
 - d. Costs of items of personal apparel,
 - e. Firearms.
- B.** The eligibility of other expenses shall be determined by the director, Division of Emergency Management, within the scope of this guidance, on a case-by-case basis.

Historical Note

Former Rule Part 6; Amended subsections (B) and (C) effective June 30, 1986 (Supp. 86-3). Former R8-2-04 amended and renumbered effective March 7, 1990 (Supp. 90-1). Amended by final rulemaking at 21 A.A.R. 3021, effective January 11, 2016 (Supp. 15-4).

R8-2-105. Claimant Procedures and Supporting Documentation

- A.** Claims for reimbursement require certification by competent authority. Certification must include:
1. The name of the agency.
 2. The date of the claim and the search and rescue mission identifier.
 3. The name of each payee and the date the claimant paid each.
 4. The item or service for which each payee received payment.
 5. The amount paid each payee.
 6. A statement that the documents supporting the claim are available in the claimant agency for review by the State Auditor General and/or the auditor from the Division of Emergency Management.
 7. The signature of the individual authorized to file claims for the claimant agency.
- B.** The amounts claimed for reimbursement from the Governor’s Emergency Fund must be based on eligible expenditures for a search and rescue mission to which a mission identifier has been assigned.
- C.** Appropriate documents, as prescribed by the Director, Division of Emergency Management, supporting each claim must be retained by the claimant pending audit by the State Auditor General and/or the Division of Emergency Management Auditor. These documents shall be retained following the reimbursement of a claim in accordance with retention schedules established by the Arizona State Library, Archives and Public Records pursuant to A.R.S. § 41-151 *et seq.*

Historical Note

Former Rule Part 7 Attachment F; Amended effective July 18, 1977 (Supp. 77-4). Amended effective June 30, 1986 (Supp. 86-3). Former R8-2-05 amended and renumbered effective March 7, 1990 (Supp. 90-1). Amended by final rulemaking at 21 A.A.R. 3021, effective January 11, 2016 (Supp. 15-4).

R8-2-106. Repealed

Historical Note

Former Rule Part 8; Amended subsection (A) effective June 30, 1986 (Supp. 86-3). Repealed effective March 7, 1990 (Supp. 90-1).

R8-2-107. Repealed

Historical Note

Former Rule Part 2. Repealed effective March 7, 1990 (Supp. 90-1).

STATUTORY AUTHORITY

A.A.C. Title 8, Chapter 2, Article 1 Search and Rescue

26-306. Powers and duties of the director of emergency management

- A. The director, subject to the approval of the adjutant general, shall:
1. Be the administrative head of the division.
 2. Be the state director for emergency management.
 3. Make rules necessary for the operation of the division.
 4. Develop and test plans for meeting any condition constituting a state of emergency or state of war emergency, except those emergency plans specifically assigned by the governor to other state agencies. Such plans shall provide for the effective mobilization and management of personnel and equipment of the state.
 5. During a state of war emergency, coordinate the emergency activities of all state agencies except the national guard.
 6. During a state of emergency or a local emergency, coordinate the emergency activities of all state agencies and the national guard.
 7. Coordinate the use of state personnel, equipment, services and facilities, including communication services, if requested by political subdivisions in support of emergency management activities.
 8. Coordinate the use of personnel, equipment, services and facilities, including communication services, of one or more political subdivisions in support of any other political subdivision in meeting emergency needs, including search or rescue operations, on the request of the using political subdivision.
 9. Develop, test and maintain a plan pursuant to section 26-305.01 for response by agencies of this state and its political subdivisions to an accident at a commercial nuclear generating station.
 10. Every two years, submit a recommendation to the legislature in connection with the assessment prescribed by section 26-306.01 with supporting documentation and information.
 11. Collaborate with the state forester in presentations to legislative committees on issues associated with forest management, wildfire prevention and suppression and wildfire emergency response and management as provided by section 37-1302, subsection B.
 12. Develop, implement and maintain a state hazardous materials emergency response and recovery plan as part of the hazardous materials emergency management program pursuant to section 49-123.
 13. Coordinate the development, implementation and maintenance of standardized curricula for hazardous materials training and education.
- B. The director, subject to the approval of the adjutant general, may:
1. Propose, develop, negotiate and consummate contractual arrangements with the federal government, state agencies and political subdivisions for technical, administrative and financial support from the federal, state and local government in connection with the emergency management activities of the state.
 2. Represent the state at conferences in the development and promotion of the emergency management capability of the state.
 3. Establish a disaster prevention council to plan for disaster prevention. The council shall consist of the members of the state emergency council and other members as determined by the director. The disaster prevention council shall coordinate the disaster prevention expertise of representatives of federal, state and local business and industry and promote partnerships to substantially reduce property loss from natural and technological disasters.

35-192. Authorization for declaration of disaster; authorization for liabilities and expenses; priorities and limitations; review and report of expenditures

A. The governor may declare an emergency arising from major disasters as provided in this section and incur liabilities therefor, regardless of whether or not the legislature is in session.

B. When the governor, or the director of the division of emergency management in the department of emergency and military affairs pursuant to section 26-303, subsection J, determines that a contingency or disaster so justifies, and declares an emergency, specific liabilities and expenses provided for in this section are authorized to be incurred against and to be paid as claims against the state from unrestricted monies from the general fund to mitigate and meet contingencies and emergencies arising from:

1. Invasions, hostile attacks, riots or insurrections.
2. Epidemics of disease or plagues of insects.
3. Floods or floodwaters.
4. Acts of God or any major disaster.
5. Wildland fires, but only after all necessary authorizations under section 37-1305 are exhausted.

C. When authorized by the governor, specific liabilities and expenses provided for in this section may be incurred against and may be paid as claims against the state from unrestricted monies from the general fund to meet contingencies and emergencies arising from incidents relating to hazardous materials as defined in section 26-301 and search or rescue operations conducted pursuant to section 11-251.02, section 11-441, subsection C or section 26-306 subject to the limitations provided in section 35-192.01. Within ninety days after monies are awarded under this section, the department of emergency and military affairs shall post in a prominent location on the department's official website the amount of monies awarded under this section, who received the monies and how the monies were spent.

D. Liabilities and expenses authorized under subsection B of this section may be incurred for any of the emergencies or contingencies prescribed in subsection B of this section in the following order of priority:

1. Reimbursement for expenses incurred to combat a menace to the health, lives or property of any considerable number of persons of the state, or to property of the state or its political subdivisions.
2. Reimbursement for expenses incurred to repair damage to any property of the state.
3. Reimbursement for expenses incurred to repair damage to any property of the political subdivisions of the state.
4. Reimbursement for expenses incurred in search or rescue operations.
5. Reimbursement for expenses incurred in emergency or disaster recovery activities or in matching federal disaster recovery programs.
6. Reimbursement for expenses for property loss mitigation measures or to match federal property loss mitigation programs.

E. The auditor of the department of emergency and military affairs shall review liabilities incurred and expenditures made under this section and report to the state emergency council at ninety-day intervals during the emergency and conduct a final review of each emergency within ninety days after the termination of the emergency. The state emergency council shall make a written report not later than September 1 of each year to the legislature of the actions of the state emergency council during the preceding fiscal year, including an itemized statement of expenditures for each emergency during the year. The department of emergency and military affairs shall post the report in a prominent location on the department's official website.

F. All liabilities incurred under this section shall be subject to the following limitations:

1. No liability shall be incurred against the monies authorized without the approval of the governor, or the adjutant general pursuant to section 26-303, subsection J, for each contingency or emergency.
2. Except as provided in paragraph 5 of this subsection, incurring of liabilities in excess of \$200,000 in any single disaster or emergency shall not be made without consent of a majority of the members of the state emergency council.

3. The aggregate amount of all liabilities incurred under this section shall not exceed \$4,000,000 for any fiscal year beginning July 1 through June 30. Monies authorized for disasters and emergencies in prior fiscal years may be used in subsequent fiscal years only for the disaster or emergency for which they were authorized. Monies authorized for disasters and emergencies in prior fiscal years, and expended in subsequent fiscal years for the disaster or emergency for which they were authorized, apply toward the \$4,000,000 liability limit for the fiscal year in which they were authorized.

4. Notwithstanding the limitations in paragraph 3 of this subsection, monies that were previously obligated but not used for a declared emergency or disaster may be reallocated to an outstanding obligation for another declared emergency or disaster and shall remain available for expenditure for the outstanding obligation. The reallocation of monies pursuant to this paragraph does not apply toward the \$4,000,000 liability limit of the fiscal year to which the monies were reallocated or in which the monies are spent.

5. Liabilities in excess of \$200,000 incurred by the Arizona department of forestry and fire management may be reimbursed with the approval of the governor or state emergency council. The reimbursement shall be made pursuant to rules adopted pursuant to section 37-1305, subsection G or, if rules are not adopted pursuant to section 37-1305, subsection G, pursuant to rules adopted pursuant to subsection G of this section.

6. An obligation of monies under this section may be made only when one or more of the following conditions exist:

(a) No appropriation or other authorization is available to meet the contingency or emergency.

(b) An appropriation is insufficient to meet the contingency or emergency.

(c) Federal monies available for such contingency or emergency require the use of state or other public monies.

G. The director of the division of emergency management in the department of emergency and military affairs shall develop rules for administering the monies authorized for liabilities under this section, subject to approval by the governor.

35-192.01. Reimbursement procedures

A. Political subdivisions may apply to the state director of emergency management for reimbursement of necessary expenses incurred in search or rescue operations, not including purchase of equipment or facilities, under section 35-192, subsection C subject to the following limitations:

1. Not to exceed fifty per cent of the first one thousand dollars or less of such expenditures in any fiscal year.

2. Not to exceed seventy-five per cent of all such expenditures in excess of one thousand dollars up to twenty-one thousand dollars in any fiscal year.

3. One hundred per cent of expenditures in excess of twenty-one thousand dollars in any fiscal year.

B. A department of the state which expends funds for search or rescue operations in an amount in excess of that provided for in the regular appropriation and when directed to do so by the governor or state director of emergency management may apply for reimbursement of such excess expenditures to the state director of emergency management under the provisions of section 35-192.

C. The director of emergency management shall adopt with the approval of the governor rules concerning such reimbursement.

Arizona Department of Emergency and Military Affairs
Title 8. Emergency and Military Affairs
Chapter 2. Department of Emergency and Military Affairs –
Division of Emergency Management
Article 3. Governor’s Emergency Fund

OVERVIEW OF ARTICLE 3 RULES

The Arizona Department of Emergency and Military Affairs (DEMA) is a cabinet level agency that includes the Arizona National Guard (Army, Air, and Joint Task Force), the Arizona Division of Emergency Management (ADEM), and Division of Administrative Services. DEMA has authority to make rules necessary for operation of these divisions.

DEMA has published a set of rules which appear in the Arizona Administrative Code at R8-2-301 et seq. (Governor’s Emergency Fund Rules) that were amended as early as June 11, 1980, and likely originally drafted following the creation of A.R.S. § 35-192 and the combining in 1972 of the Arizona Division of Emergency Services (later renamed Arizona Division of Emergency Management) with the Arizona Department of Military Affairs to create the Arizona Department of Emergency and Military Affairs.

The Governor’s Emergency Fund Rules support political subdivisions and state agencies experiencing an emergency or disaster by establishing a clear, concise process for requesting state assistance through a Governor’s state of emergency declaration, thus becoming eligible for state financial assistance from the Governor’s Emergency Fund to respond to and recover from the event with reasonable provisions that balance protection for state taxpayers.

Arizona Department of Emergency and Military Affairs
Title 8, Chapter 2, Article 3
Five-Year Review Report

1. Authorization of the rule by existing statutes:

General Statutory Authority:

- A.R.S. § 26-306(A)(3) establishes the Division’s general authority to adopt rules.

Specific Statutory Authority:

- A.R.S. § 35-192(G) states “The director of the division of emergency management in the department of emergency and military affairs shall develop rules for administering the monies authorized for liabilities under this section subject to approval by the governor.”

2. The objective of each rule:

Rule	Objective
R8-2-301	To establish common definitions for terms used by political subdivisions of disaster-affected communities and state agencies affected by the disaster that are applying for state and federal disaster assistance, which are necessary to effectively administer the Governor’s Emergency Fund Program.
R8-2-302	To establish who is authorized to request emergency assistance on behalf of a political subdivision or state agency affected by disaster in order to prevent confusion or questions of legit requests, and standardize the forms required for submission so as to ensure all applications contain the relevant information needed by the state to take action.
R8-2-303	To identify the basic information that must be included in a request for emergency assistance from a political subdivision or state agency to ensure all relevant information is included, as well as reinforce the responsibility that all political subdivisions and state agencies have to prepare for and be able to respond to localized emergencies.
R8-2-304	To define the application process used by a political subdivision of a disaster-affected community to receive assistance in order to maintain consistency with the requirements set by state law, as well as ensure timely submissions that help to meet federal disaster declaration guidelines if the emergency grows beyond the state’s ability to respond.
R8-2-305	To allow for and define the application process used by a state agency affected by disaster to receive assistance, and ensure timely submissions to meet federal disaster declaration guidelines if the emergency grows beyond the state’s ability to respond.
R8-2-306	To define the actions required of the Director and Governor when an application for assistance is received, and establish the maximum liability of the state for claims submitted following an emergency declaration by the Governor.

R8-2-307	To reduce confusion for claims and declarations by requiring all correspondence regarding an application to be referenced using an assigned file number.
R8-2-308	To reinforce that expenditures from the Governor’s Emergency Fund are limited to the amounts authorized by the Governor for a particular proclamation, as the Governor only has statutory authority to provide up to \$200,000 per disaster and further assistance must be approved by the State Emergency Council
R8-2-309	To establish reasonable time frames that align with FEMA guidelines for submission of all records relating to claims in order to properly document all related disaster damage while supporting the recovery of a community to its pre-disaster condition and ensuring proper stewardship of taxpayer funds.
R8-2-310	To inform applicants of the requirement to retain their claim-related records and to align those requirements with the retention schedules adopted by the State Library.
R8-2-311	To define how the incident period and termination of the proclamation are determined and potential to be amended, as this informs the establishment of other time frames regarding claim eligibility and community recovery following the emergency.
R8-2-312	To protect state taxpayers by establishing that the state is not liable for any claim for which the applicant receives funds from another source, and has sought out other available sources (and been denied access to such sources) before submitting a claim for assistance to the state. Additionally, the rule establishes that the applicant must refund money if the Division later determines that duplicate funds were received.
R8-2-313	To define reasonable and allowable claims against the fund arising from an emergency to protect taxpayers and eliminate the opportunity for an applicant to financially benefit from a disaster by including the upgrade or restoration of infrastructure that was not maintained by the applicant.
R8-2-314	To allow for mitigation projects to take place following a disaster to reduce the risk for future damage to infrastructure subject to repeated damage, but to clearly explain that the applicant shall comply with any mitigation requirements specified by the Director and to establish the limits to claims against the fund for such projects.
R8-2-315	To define authorization procedures for an advance of funds to support applicants that require an advance of funds to continue work on projects related to repairing and restoring infrastructure damaged by a declared disaster and assist with the timely recovery of the applicant.
R8-2-316	To define requirements for final payment of funds, which include a final inspection of work and audit of applicant’s claims, to ensure all claims are complete and the community has fully recovered from the disaster.
R8-2-317	To establish that procurement requirements must comply with Arizona procurement laws and provide a citation to those laws to prevent potential fraud, waste, or abuse of taxpayer dollars.
R8-2-318	To require a contract or subcontract provision stating that records are subject to inspection and audit by the state for five years if an applicant's contractor or subcontractor submits a claim for reimbursement against the fund in order to prevent potential fraud, waste, or abuse of taxpayer dollars.

R8-2-319	To define the conditions and procedures the Director will take for obtaining a refund from an applicant and to inform procedures for applicants to challenge those determinations in order to prevent potential fraud, waste, or abuse of taxpayer dollars.
R8-2-320	To provide an opportunity for an aggrieved party to appeal a decision by the Director as allowable by state law, and to define that process.

3. **Are the rules effective in achieving their objectives?** Yes X No ___

The objectives of these rules are effectively met.

4. **Are the rules consistent with other rules and statutes?** Yes X No ___

These rules are consistent with other rules promulgated by this agency, and with the general statutory authority to adopt rules found in A.R.S. § 26-306 (A)(3), and the specific statutory authority creating the state’s Emergency Fund and the requirement to adopt rules for the program in A.R.S. § 35-192(G).

5. **Are the rules enforced as written?** Yes X No ___

These rules are consistently and fairly enforced as written.

6. **Are the rules clear, concise, and understandable?** Yes X No ___

Although these rules are generally understandable, DEMA has undertaken a full review of Title 8 since 2017 to evaluate the clarity and understandability of the rules, as well as to ensure alignment with FEMA’s Public Assistance Program (44 C.F.R. Part 206 and program guidance) to provide greater efficiency and consistency to political subdivisions. The Division aligns rules with FEMA’s Public Assistance Program in order to expedite applications for federal assistance in the event a state declared disaster grows beyond the state’s ability to respond, enabling one application for multiple sources of assistance. Some examples of rules currently under consideration for revision include:

- R8-2-301: Update and add new defined terms to align with updated terms used for federal assistance requests.
- R8-2-309: Currently this rule only speaks to time limits relating to the action of requesting assistance, and the bulleted categories are incorrectly formatted. There is a need to correct the formatting, add language to enable requests for damage assessments of eligible items, establish work completion deadlines, clarify the process for time extensions, and clarify other aspects of the program.

- R8-2-310: Update record retention guidelines to comply with federal assistance requests.
- R8-2-311: Amend language to eliminate redundancies.
- R8-2-313: Amend language to improve clarity of the requirements and understanding of eligible activities for reimbursements.
- R8-2-314: Retitle section to reflect current language (Hazard Mitigation and Improved Projects). Promote Hazard Mitigation opportunities. Revise language to align with updated terms, improve clarity of the requirements, and comply with federal assistance requests. Establish financial responsibility for Improved projects.
- R8-2-320: Update language to align with current legal processes and improve clarity.

The language for all rules will be reviewed and revised to ensure rule language aligns with updated terms and to improve clarity of the requirements throughout as identified. Other areas for general consideration include demonstrating that an applicant had used its available and mutual aid resources in responding to an emergency, removing rules no longer needed such as R8-2-304(C), and address some instances where reordering some rules will enhance the understanding and clarity of the program and processes.

7. **Written criticisms received within the last five years?** Yes No

The Department has not received any written criticisms of these rules within the last five years.

8. **Economic, small business, and consumer impact comparison:**

As found in previous Economic Impact assessments, these rules provide a positive economic impact by reimbursing state agencies and political subdivisions for eligible expenses following a state declared emergency. The state’s Emergency Fund authorized by A.R.S. § 35-192 was created in 1966 as the de facto insurance policy of the state. It is designed to offset the costs incurred by the state from a disaster and by a political subdivision that are beyond the ability of a state agency or political subdivision to respond, but not eliminate the responsibility of each state agency and political subdivision to be prepared for emergencies. In accordance with this intent, the Emergency Fund reimburses political subdivisions 75% of eligible costs resulting from a state declared disaster. The rules provide the structure to help the state and a political subdivision more quickly recover from a declared disaster, which positively impacts the citizens, businesses, and economic recovery of the area while also buffering the state and political subdivisions from a large budgetary impact caused by an unexpected event.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

The Department has not received any analysis by another party comparing the impact of the rules reviewed in this report on this state's business competitiveness or to the impact on business in other states.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The agency was not able to secure approval to proceed with the previous course of action identified in the previous five-year-review report due to staff changes prior to the onset of the 2020 COVID-19 pandemic. This delay has not had any negative impact on implementation of the program, and afforded the agency additional time to review the program and identify additional opportunities to improve rule understanding by updating definitions, references, and order. The agency anticipates requesting approval following acceptance of this five-year-review report by GRRC.

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 implementing reimbursement from the state's Emergency Fund provides a financial benefit to the state and political subdivisions following disaster. The rules do not impose any unnecessary burdens or costs while implementing guidelines and limitations found in statute, and aligning with FEMA guidelines increases the efficiency while reducing the burden and work requirement to apply for multiple sources of assistance following a disaster.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

There is no corresponding federal law as each state is able to manage disaster response as it sees fit. DEMA Division of Emergency Management has aligned the rules with FEMA's Public Assistance Program (44 C.F.R. Part 206) in order to expedite applications for federal assistance in the event a state declared disaster grows beyond the state's ability to respond.

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:**

No permits, licenses, or agency authorizations are created by this rule.

14. **Proposed course of action**

DEMA anticipates submitting a rulemaking moratorium exemption request to the Governor's Office following GRRC acceptance of this five-year-review report to amend and re-order the article to improve rule clarity. Pending receipt of approval from the Governor's Office, DEMA plans to submit the rulemaking to Council no later than December 2022.

RULE TEXT

A.A.C. TITLE 8, CHAPTER 2

ARTICLE 3. GOVERNOR'S EMERGENCY FUND

R8-2-33. Repealed

Historical Note

Former Rules 1 and 2; Former Section R8-2-33 repealed, new Section R8-2-33 adopted effective June 11, 1980 (Supp. 80-3). Repealed effective September 18, 1996 (Supp. 96-3).

R8-2-34. Repealed

Historical Note

Former Rules 2a and 2b; Former Section R8-2-34 repealed, new Section R8-2-34 adopted effective June 11, 1980 (Supp. 80-3). Repealed effective September 18, 1996 (Supp. 96-3).

R8-2-35. Repealed

Historical Note

Former Rules 3, 4, 5 and 6; Former Section R8-2-35 repealed, new Section R8-2-35 adopted effective June 11, 1980 (Supp. 80-3). Repealed effective September 18, 1996 (Supp. 96-3).

R8-2-36. Repealed

Historical Note

Former Rule 7; Former Section R8-2-36 repealed, new Section R8-2-36 adopted effective June 11, 1980 (Supp. 80-3). Repealed effective September 18, 1996 (Supp. 96-3).

R8-2-37. Repealed

Historical Note

Former Section R8-2-37 repealed, new Section R8-2-37 adopted effective June 11, 1980 (Supp. 80-3). Repealed effective September 18, 1996 (Supp. 96-3).

R8-2-38. Repealed

Historical Note

Former Sections A1, A2, B1, B2, C1, C2, D, E Attachment; Former Section R8-2-38 repealed, new Section R8-2-38 adopted effective June 11, 1980 (Supp. 80-3). Repealed effective September 18, 1996 (Supp. 96-3).

R8-2-39. Repealed

Historical Note

R8-2-39 and Attachments 1 and 2 adopted effective June 11, 1980 (Supp. 80-3). R8-2-39 and Attachments 1 and 2 repealed effective September 18, 1996 (Supp. 96-3).

R8-2-301. Definitions

In addition to the definitions provided in A.R.S. § 26-301, the following definitions apply to this Article, unless specified otherwise:

1. "Administrative Costs" covers direct and indirect costs incurred, in administering the public assistance grant. Direct costs can be identified separately by project and indirect costs are incurred for common or joint purposes. Examples of the activities that the allowance is intended to cover include: establishing project files, providing copies of documentation, collecting cost data and developing cost estimates, working with the State during project monitoring, final inspection, audits and audit preparation.
2. "Applicant" means any state agency or political subdivision of the state that requests emergency assistance from the state.
3. "Applicant's authorized representative" means the person authorized by the governing body of a political subdivision to request funds, time extensions, and attend to other recovery matters related to a specific emergency proclamation.
4. "Application for Assistance" means a written request by an applicant to the Director for assistance in responding to and/or recovering from an emergency.
5. "Contingency proclamation" means the document in which the governor authorizes the Director to pay expenses incurred by political subdivisions or state agencies that respond to frequently occurring emergencies that pose a significant and constant threat such as search or rescue, and hazardous materials spills.
6. "County" means the county or counties where an emergency is located.
7. "Department" means the Department of Emergency and Military Affairs provided in A.R.S. § 26-101.
8. "Director" means the Director of the Arizona Division of Emergency Management within the Department of Emergency and Military Affairs.
9. "Division" means Arizona Division of Emergency Management.
10. "Eligible work" means actions taken and work performed by an applicant in response to an emergency that are consistent with the intent and purposes set forth in A.R.S. § 35-192 and these rules.

11. "Emergency" means any occasion or instance for which, in the determination of the Governor, state assistance is needed to supplement state agencies' and political subdivisions' efforts and capabilities to save lives, protect property and public health and safety, or to lessen or avert the threat of a disaster in Arizona.
12. "Emergency resolution" means a document by which the governing body of a political subdivision declares an emergency.
13. "Facility" means any building, works, system or equipment, built or manufactured, or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.
14. "Fund" means the portion of the general fund used to pay incurred liabilities and expenses authorized as claims against the state to meet contingencies and emergencies when the Governor declares that a state of emergency exists.
15. "Incident period" means the time interval of an emergency during which damage occurs as documented in the Governor's Declaration of Emergency.
16. "Political subdivision" means any county, incorporated city or town, or school, community college, or other tax levying public improvement district.
17. "Proclamation" means the document in which the Governor declares that a state of emergency exists pursuant to A.R.S. § 35-192(A) and authorizes an expenditure from the fund.
18. "Reimbursement" means the payment of state funds in accordance with A.R.S. § 35-192.
19. "State" means the state of Arizona.
20. "State agency" means any department, commission, board, agency, or division of the state, including the Department of Emergency and Military Affairs.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

R8-2-302. Applications for Emergency Assistance

- A. An applicant shall act for the purpose of this Article through its chief executive officer or body, or the applicant's authorized representative.
- B. An applicant shall use forms that are available on the Division's website.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

R8-2-303. Contents of an Application

- A. An applicant shall set forth in an application the cause, location, and beginning date of the emergency, a description of the damage caused by the emergency and potential health hazards arising from the emergency, the costs incurred for emergency response, and an estimate of the number of people affected by the emergency and costs for recovery.
- B. Before submitting an application to the Director, the applicant shall use its available resources to respond to the emergency and request assistance from other political subdivisions that might respond to the emergency.
- C. The "emergency" must also be clearly demonstrated to be above and beyond the jurisdiction's ability to recover from without state assistance. Examples as to how to demonstrate this element would be: use of mutual aid, documenting multiple events, lack of physical or personnel resources, depleted contingency funds or redirection of operating funds; which must be attested to in writing by the jurisdiction's chief financial officer.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

R8-2-304. Application by a Political Subdivision

- A. A county shall issue an emergency resolution before submitting an application to the Director.
- B. A political subdivision other than a county shall submit an emergency resolution to the county and request that, if necessary, the county issue an emergency resolution and make application to the Director. If the county fails to issue an emergency resolution expeditiously, a political subdivision may apply directly to the Director for assistance.
- C. A political subdivision shall submit an application to the Director using the most expeditious means.
- D. The Director shall reject an application that is not received within 15 days from the start of the emergency unless the political subdivision shows good cause for the delay or that the emergency is of a type that the date the emergency started is difficult to establish.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-305. Application by a State Agency

- A. An applicant that is a state agency shall submit an application directly to the Director using the most expeditious means.
- B. The Director shall reject an application that is not received within 15 days from the start of the emergency unless the state agency shows good cause for the delay or that the emergency is of a type that the date the emergency started is difficult to establish.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-306. Action on an Application

- A. The Director shall make a recommendation to the Governor whether to issue a proclamation.
- B. The Director shall notify the applicant in writing, of the Governor's decision to issue or not to issue a proclamation. If the Governor issues a proclamation, the Division shall forward a copy to the applicant.
- C. State payment of claims submitted by a political subdivision pursuant to a proclamation shall not exceed 75% of eligible costs or such lesser amount established by the Director. In no event should the aggregate amount of payments exceed the amount set forth in the Governor's proclamation, unless such amount is authorized pursuant to R8-2-308.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

R8-2-307. Proclamation File Number

- A. The Division shall assign a file number to each emergency that is the subject of a proclamation.
- B. All correspondence regarding an emergency to which a file number is assigned shall reference the file number.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-308. Limitation of Fund Expenditure

Expenditure from the fund, as a result of a particular proclamation, shall not exceed the amount authorized in the proclamation unless an additional amount is authorized by the Governor's Emergency Council as prescribed in A.R.S. § 35-192.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

R8-2-309. Time Limit for Filing Claims

- A. Following the Governor's proclamation reasonable work completion time limits shall be established by the Division. If the applicant feels, an extension of time is needed to complete work and submit claims arising from an emergency, a request for time extension, stating good cause for request, shall be submitted to the Division prior to identified time limit. If it is determined that good cause exists, an extension of time will be granted and the applicant will be notified of the decision in writing. Time limits are as follows:
 - B. Six months for temporary measures and emergency work and 12 months for permanent measures. If no effort has been made to begin work within this timeline, the project can be cancelled and funding withdrawn. If work has begun, a request for time extension should be submitted, as per subsection (A), and needs to include a timeline for project completion. A second extension request will be considered if there are extenuating circumstances outside the applicant's ability to control and/or work is near completion.
 - C. All damages attributed to a declared disaster must be identified by the eligible applicant within 60 days of the date of the Governor's Declaration. A final list of projects will be documented for concurrence and signature by both the applicant and a Division representative at the end of that 60 day period. Any damages identified after the 60 days will not be considered for reimbursement under the declared event.
 - D. All required information pertaining to the accurate development, review and approval of Project Worksheets identified under subsection (B) must be provided to the Division by the eligible applicant within six months from the date of declaration. Any information not received within that time-frame will not be considered as eligible costs reimbursable under the declared event; with the exception of hidden damages discovered after construction begins.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

R8-2-310. Retention of Records

The applicant shall maintain for three years all records relating to claims submitted by the applicant in accordance with A.R.S. § 41-151 and shall make the records available for inspection and audit by the Department auditor and the auditor general.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

R8-2-311. Establishment of the Incident Period and Termination of the Proclamation

- A. The Director shall recommend to the Governor, for inclusion in the Governor's proclamation, the beginning and ending dates of the incident period. If the Director determines that the incident period has a beginning or ending date different from that stated in the proclamation, the Director shall recommend to the Governor that the proclamation be amended to reflect the correct dates.
- B. At the Director's recommendation, the Governor shall terminate the proclamation when the following occur:
 - 1. The recovery work is complete,

2. The Division completes a final inspection of all work for which the applicant submits a claim,
 3. The applicant submits a claim to the Director for all work which the applicant seeks reimbursement,
 4. The Division pays all authorized claims,
 5. The required audits are complete, and
 6. The applicant receives amount due or pays amount owed.
- C. After the audit and final payment of all eligible applicant's claims, the Governor shall issue a termination proclamation.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

R8-2-312. Duplication of Benefits

- A. The state is not liable for any claim arising from an emergency for which the applicant receives funds from another source.
- B. The state is not liable for any claim arising from an emergency unless the applicant applies for and is denied funding from other available sources before submitting the claim to the state.
- C. If an applicant is within the Designated Disaster area of a Presidential Major Disaster Declaration, the state is not liable for any claim deemed ineligible by the Federal Emergency Management Agency (FEMA) under a Presidential Major Disaster Declaration. Claims denied by FEMA will not be considered eligible under the corresponding State Declaration unless otherwise outlined under R8-2-313(B).
- D. If the Director or an applicant determines that the applicant received duplicate funds for a claim from the state and from another source, the applicant shall refund the amount received from the state within 60 days of written notification.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

R8-2-313. Allowable Claims Against the Fund

- A. The Director shall allow expenditures from the fund for a claim arising from an emergency only if:
 1. The amount claimed is a direct result of response or recovery operations to the emergency,
 2. The applicant is legally and financially responsible for providing response or recovery operations in the emergency, and
 3. The facility is other than a residential structure, and
 4. The amount claimed is authorized under the provisions of subsection (B) or (D).
 5. Once remediation is complete, projects will comply with appropriate state or federal environmental requirements, building, safety or other appropriate regulatory requirements.
- B. The Director shall allow the following costs to be paid as claims against the fund:
 1. Overtime salaries or wages and benefits of the applicant's budgeted personnel directly engaged in eligible emergency work;
 2. Salaries or wages and benefits of the applicant's budgeted personnel directly engaged in eligible permanent work;
 3. Salaries or wages and benefits of non-budgeted employees directly engaged in eligible emergency or permanent work;
 4. Communication costs directly related to the emergency and directly requested by an eligible applicant;
 5. Travel and per diem costs directly related to the emergency for personnel requested by an eligible applicant;
 6. Materials and supplies consumed directly requested by an eligible applicant, except those listed under subsection (C)(2);
 7. Rental of privately owned equipment at documented contractual rates directly requested by an eligible applicant;
 8. Contributions toward the purchase of equipment if the necessary equipment is not available from federal, state, or local sources, and if the contribution does not exceed the cost of renting the item at prevailing local rates. Contribution will be reduced by the fair market value when the item is no longer needed for the declared disaster;
 9. Owning and operating the applicant's equipment using rates established by the applicant or FEMA, whichever is less;
 10. Work performed by private contractors. Contracts must be of reasonable cost and competitively bid and adhere to all jurisdictional procurement procedures. Jurisdictions may not enter into contracts with any private entity that has been debarred or suspended. Emergency Procurement, as defined in A.A.C. R2-7-E302, means "any condition creating an immediate and serious need for materials, services, or construction in which the state's best interests are not met through the use of other source-selection methods. The condition must seriously threaten the functioning of state government, the preservation or protection of property, or the health or safety of a person". Any procurement need that does not meet this definition would require following standard procurement process/procedures.
 11. Work performed under a mutual-aid agreement between local governments or between a local government and a state agency is eligible for reimbursement by the requesting agency. The providing entity shall submit documented costs to the requesting agency for reimbursement. Eligible work must be paid to the responding jurisdiction by the requesting jurisdiction, and the requesting jurisdiction is then eligible for a cost-share reimbursement by the State; and
 12. Prison labor including amounts paid to prisoners in accordance with established rates, guards (required number based on guard/prisoner ratio) and costs of transporting and feeding prisoners.
 13. Snow Removal: a political subdivision could make Application for State Assistance if they had met the following condition: If a winter storm event pushes the jurisdiction's cumulative snowfall total for a winter season above the average

of the last five season's annual snowfall, then the jurisdiction could be eligible for assistance providing the event that pushes the cumulative total above the threshold is above and beyond the capability of the affected jurisdiction. (see R8-2-303) (Snowfall measurement data source will be the National Weather Service and historical snowfall data source will be the National Climatic Data Center.)

- C. The Director shall not allow the following costs to be paid as claims against the fund:
 - 1. Salaries or wages and benefits of elected or appointed officials responsible for directing governmental activities;
 - 2. Administrative Costs, office supplies and equipment;
 - 3. Rental of administrative office space;
 - 4. Depreciation, insurance, storage, and similar fixed overhead costs;
 - 5. Repairs and fuel for privately owned rented equipment, except where the rental agreement provides that the applicant will be responsible for repairs and fuel in addition to the rental fee;
 - 6. Work performed under agreement between a state agency or local government and a federal agency where the work is paid for by federal funds;
 - 7. Costs incurred under contracts based on cost plus a percentage of costs, unless the Director determines that the performance of immediate emergency work would be unduly delayed and would likely result in an imminent hazard to health or safety, in which case the Director may authorize an exception; and
 - 8. Prison labor costs for lodging.
- D. To submit a claim for a cost that cannot be classified under subsection (B), an applicant shall make a written request to the Director for an exception. The Director shall grant a request for an exception if the request explains the nature of the exception justifies why it is needed, and meets all other program guidelines as outlined in R8-2-301 through R8-2-320. The Director shall immediately inform the applicant in writing of the decision to grant or deny the request for an exception.
- E. When a facility damaged as a result of an emergency is repaired or replaced, the Director shall allow only the costs required to return the facility to the condition it was before the emergency, incorporating current standards and design requirements.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

R8-2-314. Mitigation of Future Damages or Improvements by the Applicant

- A. The applicant shall comply with any mitigation requirements specified by the Director for repair or replacement projects subject to repeated damage from flooding or other threats to life or property.
- B. The applicant shall identify and request cost effective mitigation opportunities for the damaged element of the facility that would mitigate future impact from a similar event.
- C. With approval by the Director, the applicant may restore pre-disaster function and make improvements for which the applicant is financially responsible. Claims against the Fund are limited to the State share for the project estimate for the repairs necessary to return the facility to the condition it was before the emergency. A written request for improvements is to be submitted as soon as possible following receipt of approved project which will include a statement recognizing financial responsibility for the improvements.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

R8-2-315. Advance of Funds

All requests for an advance of funds must be made in writing and shall be signed by the applicant's authorized representative and forwarded to the Director. The Director shall assess a request for an advance to determine whether the request is reasonable and for eligible work that has been completed. The Director shall grant a request for an advance for work not completed only if an applicant has demonstrated that the work cannot be completed without an advance. The amount of an advance will be based upon damage assessment, eligible expenditures to date and the estimated eligible expenditures for the next 60-day period.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

R8-2-316. Final Inspection and Audit

Upon completion of all work by an applicant, the Division shall inspect all the work that the applicant claims. The applicant shall provide the Division with access to all claimed work and shall permit review of all records relating to the work. After completion of the final inspection, the Department's chief auditor shall conduct an audit of the applicant's claims. The Director shall use this audit to determine the eligibility of claimed costs and final payment due to the applicant or overpayment due to the Division.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

R8-2-317. Procurement Requirements

The Director shall not allow a claim arising from a procurement unless the applicant complies with the Arizona procurement laws set forth in A.R.S. § 41-2501, et seq., and A.A.C. R2-7-101 et seq.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-318. Inspection and Audit of Contract Provisions

If a contract or subcontract for the furnishing of goods, equipment, labor, materials, or services to the applicant may result in a claim, the applicant shall include in the contract or subcontract a provision that all books, accounts, reports, and other records relating to the contract or subcontract shall be subject to inspection and audit by the state for five years after completion of the contract or subcontract.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-319. Overpayment

- A. If the Director determines that an applicant is required to refund an overpayment, as demonstrated by the audit outlined in R8-2-316, the Director shall provide the applicant written notice of the amount owed. The applicant shall reimburse the Division within two months of the date of notification.
- B. An applicant may request a review, as set forth in R8-2-320, of a determination under subsection (A) that an amount must be refunded. If the review results in a decision that the applicant is required to reimburse the Division, the applicant shall refund the amount required within two months of the decision.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3). Amended by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

R8-2-320. Appeal of the Director's Decision

- A. Any party aggrieved by a decision rendered by the Director may appeal the decision, in writing, not later than 15 days after receipt of notice of the Director's decision.
- B. When an appeal is filed, the Director shall contact the Office of Administrative Hearings to schedule the case with the office in accordance with A.R.S. § 41-1092.02.

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3).

R8-2-321. Repealed

Historical Note

Adopted effective September 18, 1996 (Supp. 96-3). Repealed by exempt rulemaking at 19 A.A.R. 4216, effective December 1, 2013 (Supp 13-4).

STATUTORY AUTHORITY

A.A.C. Title 8, Chapter 2, Article 3 Governor's Emergency Fund

26-306. Powers and duties of the director of emergency management

- A. The director, subject to the approval of the adjutant general, shall:
1. Be the administrative head of the division.
 2. Be the state director for emergency management.
 3. Make rules necessary for the operation of the division.
 4. Develop and test plans for meeting any condition constituting a state of emergency or state of war emergency, except those emergency plans specifically assigned by the governor to other state agencies. Such plans shall provide for the effective mobilization and management of personnel and equipment of the state.
 5. During a state of war emergency, coordinate the emergency activities of all state agencies except the national guard.
 6. During a state of emergency or a local emergency, coordinate the emergency activities of all state agencies and the national guard.
 7. Coordinate the use of state personnel, equipment, services and facilities, including communication services, if requested by political subdivisions in support of emergency management activities.
 8. Coordinate the use of personnel, equipment, services and facilities, including communication services, of one or more political subdivisions in support of any other political subdivision in meeting emergency needs, including search or rescue operations, on the request of the using political subdivision.
 9. Develop, test and maintain a plan pursuant to section 26-305.01 for response by agencies of this state and its political subdivisions to an accident at a commercial nuclear generating station.
 10. Every two years, submit a recommendation to the legislature in connection with the assessment prescribed by section 26-306.01 with supporting documentation and information.
 11. Collaborate with the state forester in presentations to legislative committees on issues associated with forest management, wildfire prevention and suppression and wildfire emergency response and management as provided by section 37-1302, subsection B.
 12. Develop, implement and maintain a state hazardous materials emergency response and recovery plan as part of the hazardous materials emergency management program pursuant to section 49-123.
 13. Coordinate the development, implementation and maintenance of standardized curricula for hazardous materials training and education.
- B. The director, subject to the approval of the adjutant general, may:
1. Propose, develop, negotiate and consummate contractual arrangements with the federal government, state agencies and political subdivisions for technical, administrative and financial support from the federal, state and local government in connection with the emergency management activities of the state.
 2. Represent the state at conferences in the development and promotion of the emergency management capability of the state.

3. Establish a disaster prevention council to plan for disaster prevention. The council shall consist of the members of the state emergency council and other members as determined by the director. The disaster prevention council shall coordinate the disaster prevention expertise of representatives of federal, state and local business and industry and promote partnerships to substantially reduce property loss from natural and technological disasters.

35-192. Authorization for declaration of disaster; authorization for liabilities and expenses; priorities and limitations; review and report of expenditures

A. The governor may declare an emergency arising from major disasters as provided in this section and incur liabilities therefor, regardless of whether or not the legislature is in session.

B. When the governor, or the director of the division of emergency management in the department of emergency and military affairs pursuant to section 26-303, subsection J, determines that a contingency or disaster so justifies, and declares an emergency, specific liabilities and expenses provided for in this section are authorized to be incurred against and to be paid as claims against the state from unrestricted monies from the general fund to mitigate and meet contingencies and emergencies arising from:

1. Invasions, hostile attacks, riots or insurrections.
2. Epidemics of disease or plagues of insects.
3. Floods or floodwaters.
4. Acts of God or any major disaster.
5. Wildland fires, but only after all necessary authorizations under section 37-1305 are exhausted.

C. When authorized by the governor, specific liabilities and expenses provided for in this section may be incurred against and may be paid as claims against the state from unrestricted monies from the general fund to meet contingencies and emergencies arising from incidents relating to hazardous materials as defined in section 26-301 and search or rescue operations conducted pursuant to section 11-251.02, section 11-441, subsection C or section 26-306 subject to the limitations provided in section 35-192.01. Within ninety days after monies are awarded under this section, the department of emergency and military affairs shall post in a prominent location on the department's official website the amount of monies awarded under this section, who received the monies and how the monies were spent.

D. Liabilities and expenses authorized under subsection B of this section may be incurred for any of the emergencies or contingencies prescribed in subsection B of this section in the following order of priority:

1. Reimbursement for expenses incurred to combat a menace to the health, lives or property of any considerable number of persons of the state, or to property of the state or its political subdivisions.
2. Reimbursement for expenses incurred to repair damage to any property of the state.
3. Reimbursement for expenses incurred to repair damage to any property of the political subdivisions of the state.
4. Reimbursement for expenses incurred in search or rescue operations.
5. Reimbursement for expenses incurred in emergency or disaster recovery activities or in matching federal disaster recovery programs.
6. Reimbursement for expenses for property loss mitigation measures or to match federal property loss mitigation programs.

E. The auditor of the department of emergency and military affairs shall review liabilities incurred and expenditures made under this section and report to the state emergency council at ninety-day intervals during the emergency and conduct a final review of each emergency within ninety days after the

termination of the emergency. The state emergency council shall make a written report not later than September 1 of each year to the legislature of the actions of the state emergency council during the preceding fiscal year, including an itemized statement of expenditures for each emergency during the year. The department of emergency and military affairs shall post the report in a prominent location on the department's official website.

F. All liabilities incurred under this section shall be subject to the following limitations:

1. No liability shall be incurred against the monies authorized without the approval of the governor, or the adjutant general pursuant to section 26-303, subsection J, for each contingency or emergency.
2. Except as provided in paragraph 5 of this subsection, incurring of liabilities in excess of \$200,000 in any single disaster or emergency shall not be made without consent of a majority of the members of the state emergency council.
3. The aggregate amount of all liabilities incurred under this section shall not exceed \$4,000,000 for any fiscal year beginning July 1 through June 30. Monies authorized for disasters and emergencies in prior fiscal years may be used in subsequent fiscal years only for the disaster or emergency for which they were authorized. Monies authorized for disasters and emergencies in prior fiscal years, and expended in subsequent fiscal years for the disaster or emergency for which they were authorized, apply toward the \$4,000,000 liability limit for the fiscal year in which they were authorized.
4. Notwithstanding the limitations in paragraph 3 of this subsection, monies that were previously obligated but not used for a declared emergency or disaster may be reallocated to an outstanding obligation for another declared emergency or disaster and shall remain available for expenditure for the outstanding obligation. The reallocation of monies pursuant to this paragraph does not apply toward the \$4,000,000 liability limit of the fiscal year to which the monies were reallocated or in which the monies are spent.
5. Liabilities in excess of \$200,000 incurred by the Arizona department of forestry and fire management may be reimbursed with the approval of the governor or state emergency council. The reimbursement shall be made pursuant to rules adopted pursuant to section 37-1305, subsection G or, if rules are not adopted pursuant to section 37-1305, subsection G, pursuant to rules adopted pursuant to subsection G of this section.
6. An obligation of monies under this section may be made only when one or more of the following conditions exist:
 - (a) No appropriation or other authorization is available to meet the contingency or emergency.
 - (b) An appropriation is insufficient to meet the contingency or emergency.
 - (c) Federal monies available for such contingency or emergency require the use of state or other public monies.

G. The director of the division of emergency management in the department of emergency and military affairs shall develop rules for administering the monies authorized for liabilities under this section, subject to approval by the governor.

ARIZONA MEDICAL BOARD

Title 4, Chapter 16, Articles 1 & 4



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 4, 2022

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

FROM: Council Staff

DATE: September 20, 2022

SUBJECT: ARIZONA MEDICAL BOARD
Title 4, Chapter 16, Articles 1 and 4

Summary

This Five-Year Review Report (5YRR) from the Arizona Medical Board (Board) relates to three (3) rules in Title 4, Chapter 16, Article 1 (General Provisions) and two (2) rules in Article 4 (Medical Assistants). Article 1 relates to continuing medical education, as well as procedures and standards for requesting rehearings or reviews of Medical Board decisions. Article 4 relates to medical assistant training requirements and authorized procedures.

In a rulemaking that went into effect in March 2019, the Board amended all of the rules reviewed for this 5YRR.

Proposed Action

In the current report, the Board is proposing to amend R4-16-401 to resolve inconsistency with recent legislation. The Board plans to submit a rulemaking to the Council in January 2023.

1. Has the agency analyzed whether the rules are authorized by statute?

The Board cites both general and specific authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Board is established under A.R.S. § 32-1402. As specified under A.R.S. § 32-1403(A), the Board's primary duty is to protect the public from unlawful, incompetent, unqualified, impaired, or unprofessional practitioners of allopathic medicine. The Board accomplishes this by licensing, regulating, and rehabilitating allopathic medical practitioners. This rule provides regulations pertaining to medical assistants. The medical assistant is authorized under A.R.S. § 32-1456 to perform certain medical tasks under direct supervision and other ministerial tasks without supervision. The Board is authorized to prescribe other medical tasks a medical assistant may perform under direct supervision and training required of the medical assistant.

According to the Board the estimated impact of the last rulemaking was minimal as it was intended to clarify definitions and make the rules more clear and understandable. The rules were amended to be consistent with statute and update training and examination requirements.

According to the Board, there are currently 26,597 licensed physicians in Arizona. According to the Board, during the last year the Board received 2,163 complaints against licensed physicians. Fewer than five of these complaints involved supervisions of a medical assistant. Of all the complaints received, none went to hearing, none resulted in disciplinary action, and none led to a motion for review or rehearing.

In addition to medical assistants, the rules impact physicians and physician assistants who employ medical assistants. While physicians and physician assistants bear the cost of ensuring qualification and providing direct supervision, they benefit from time and cost savings by employing a medical assistant to perform delegated tasks.

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 Board has determined that the benefits of the rules outweigh the minor costs of the rules and impose the least burden and costs on medical assistants and those who directly supervise medical assistants.

4. Has the agency received any written criticisms of the rules over the last five years?

The Board indicates that it has not received written criticisms of the rules in the last five (5) years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Board indicates that the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Board indicates that R4-16-401 is not consistent with recent legislative changes regarding medical assistant training. In its March 2019 rulemaking, the Board had removed an option for medical assistants to receive training through physician-offered programs. In response, the Arizona Legislature created a statutory amendment to reauthorize physician-offered training programs that meet certain minimum requirements. Thus, the Board intends to amend the rule to align with the revised statute.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Board indicates that the rules are effective in achieving their objectives. However, the Board acknowledges that the rules require amendment for consistency with the recent statutory change.

8. Has the agency analyzed the current enforcement status of the rules?

The Board indicates that there is no direct enforcement policy related to medical assistants because medical assistants are neither licensed nor regulated by the Board. However, the Board investigates complaints against licensed allopathic physicians that implicate the conduct of medical assistants under the physician's supervision. During investigation of such complaints, the Board evaluates compliance with these rules.

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. No federal law is applicable to the reviewed 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 issuance of a license or regulatory permit, as medical assistants are not licensed by the Board.

11. Conclusion

Within Title 4, Chapter 16, this 5YRR relates to three (3) rules in Article 1 (General Provisions) and two (2) rules in Article 4 (Medical Assistants). The Board indicates that the rules are generally clear, concise, understandable, effective, and enforced as written. The Board further indicates that while the current rule is not consistent with statute, it plans to submit a proposed rule amendment in January 2023 to resolve the inconsistency.

Council staff recommends approval of this report.



Arizona Medical Board

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Executive Director

Patricia E. McSorley

August 5, 2022

VIA EMAIL: grrc@azdoa.gov

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

**RE: Arizona Medical Board
Five-year-review Report
A.A.C. Title 4, Chapter 16, Articles 1 and 4**

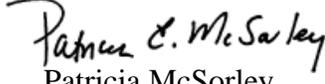
Dear Ms Sornsins:

The Board submits the referenced 5YRR for Council's review and approval. The report is due on August 31, 2022.

The Board is in compliance with A.R.S. § 41-1091.

For questions about this report, please contact the Board's executive director, Patricia McSorley, at 480-551-2791 or patricia.mcsorley@azmd.gov.

Sincerely,


Patricia McSorley
Executive Director

Revised Five-year-review Report
A.A.C. Title 4. Professions and Occupations
Chapter 16. Arizona Medical Board
Submitted for

INTRODUCTION

The Arizona Medical Board (Board) is established under A.R.S. § 32-1402. As specified under A.R.S. § 32-1403(A), the Board's primary duty is to protect the public from unlawful, incompetent, unqualified, impaired, or unprofessional practitioners of allopathic medicine. The Board accomplishes this by licensing, regulating, and rehabilitating allopathic medical practitioners.

A medical assistant is an unlicensed individual who assists in a medical practice. In May, 2020¹, the Bureau of Labor Statistics estimated there are 19,460 medical assistants practicing in Arizona. The medical assistant is authorized under A.R.S. § 32-1456 to perform certain medical tasks under direct supervision and other ministerial tasks without supervision. The Board is authorized to prescribe other medical tasks a medical assistant may perform under direct supervision and training required of the medical assistant. The legislature recently amended A.R.S. § 32-1456 to allow medical assistant training designed and offered by a physician. This amendment placed in statute a provision the Board removed from rule in 2018.

In a rulemaking that went into effect on March 9, 2019 (See 25 A.A.R. 145), the Board amended all the rules reviewed for this report.

Statute that generally authorizes the agency to make rules: A.R.S. §§ 32-1403(A)(8) and 32-1404(D).

1. Specific statute authorizing the rule:

R4-16-101. A.R.S. § § 32-1403(A)(8) and 32-1404(D)

R4-16-102. A.R.S. § 32-1434

R4-16-103. A.R.S. §§ 32-1451 and 41-1092.09

R4-16-401. A.R.S. § 32-1456

R4-16-402. A.R.S. § 32-1456

¹ See [Medical Assistants \(bls.gov\)](https://www.bls.gov), last updated, March 31, 2021

2. Objective of the rules:

R4-16-101. Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition.

R4-16-102. Continuing Medical Education: The objective of the rule is to specify continuing education activities that are approved by the Board, the circumstances warranting an extension of time to complete the CME requirement, the method of certifying compliance, and the Board's authority to audit compliance.

R4-16-103. Rehearing or Review of Board Decision: The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision.

R4-16-401. Medical Assistant Training Requirements: The objective of this rule is to specify the training required of an individual a physician seeks to employ as a medical assistant.

R4-16-402. Authorized Procedures for Medical Assistants: The objective of this rule is to specify medical procedures a medical assistant may perform under direct supervision.

3. Are the rules effective in achieving their objectives?

Mostly yes

The rules are effective, but members of the regulated community have differing opinions regarding the education and experience requirements for medical assistants. The rules need to be amended to be consistent with a recent statutory change.

4. Are the rules consistent with other rules and statutes?

No

R4-16-401 is not consistent with the recent legislative change regarding training of medical assistants. A.R.S. § 32-1456(D) states in relevant part, "The board by rule shall prescribe medical assistant training requirements." Currently, A.A.C. R4-16-101(3) defines "approved medical assistant training program": as a program accredited by one of the following:

- a. The Commission on Accreditation of Allied Health Education Programs; or
- b. The Accrediting Bureau of Health Education Schools.

This language was the result of a rule change that went into effect on March 9, 2019, (*See* 25 A.A.R. 145) that removed a third option- for medical assistants to be trained through a program offered by a physician.

During the 55th Legislature, First Regular Session, HB 2266 added language to A.R.S. § 32-1456, (D) to reauthorize physician-offered training programs that meet certain minimum requirements. The proposed change is intended to incorporate the new statutory language into the relevant portion of the Board's rule.

5. Are the rules enforced as written? No
- There is no current enforcement policy directly related to medical assistants, as medical assistants are not licensed or regulated by the Board. The Board only regulates allopathic physicians. A.R.S. §§ 32-1458(C) and (D) direct the Board to set forth rules related to appropriate medical assistant scope of practice and training requirements, respectively. The reason the 5YRR states that the Board assesses the performance on a case by case basis is that A.R.S. § 32-1401(27)(jj) makes it an act of unprofessional conduct to, “[Exhibit] a lack of or inappropriate direction, collaboration or direct supervision of a medical assistant or a licensed, certified or registered health care provider employed by, supervised by or assigned to the physician.” When a complaint against a licensed allopathic physician is investigated by the Board that implicates the conduct of a medical assistant under the physician’s supervision, compliance with these rules is evaluated, if relevant to the conduct at issue, in order to determine whether the physician has demonstrated appropriate supervision of the medical assistant in question. For instance, if a complaint is made that a wound sutured by a medical assistant became infected leading to injury, the Board would find that the physician violated A.R.S. § 32-1401(27)(jj) because wound suturing is not included in the medical procedures listed in A.A.C. R4-16-402.
6. Are the rules clear, concise, and understandable? Yes
7. Has the agency received written criticisms of the rules within the last five years? No
- But the Board has received numerous inquiries about the scope of practice for medical assistants, the statutory definition of “direct supervision,” and whether telemedicine can be used to provide direct supervision of a medical assistant.
8. Economic, small business, and consumer impact comparison:
2019 Rulemaking (25 A.A.R. 145)
All of the reviewed rules were amended in this rulemaking.

- R4-16-101 amended the definition of “approved medical assistant training program” to exclude a program accredited by an agency recognized by the U.S. Department of Education and a program designed and offered by a licensed physician.
- R4-16-102 was amended to be consistent with a statutory change regarding required CME related to opioid-related, substance-use-disorder-related, or addiction-related issues.
- R4-16-103 was amended to be consistent with statute regarding a motion for a rehearing or review.
- R4-16-401 was amended to update the training and examination requirements for medical assistants.
- R4-16-402 was amended to update incorporated material addressing procedures within the scope of practice of a medical assistant.

There are currently 26,597 licensed physicians in Arizona. During the last year, the Board received 2,163 complaints against licensed physicians. Less than five (5) of these complaints involved supervision of a medical assistant. Of all the complaints received, zero went to hearing, zero resulted in disciplinary action, and zero led to a motion for review or rehearing.

It is estimated by the Bureau of Labor Statistics that approximately 15.61 percent of medical offices, nationwide, employ a medical assistant². Physicians and physician assistants who employ a medical assistant bear the cost of ensuring the medical assistant is qualified under R4-16-401 and the cost of providing direct supervision for the medical assistant. Physicians and physician assistants who employ a medical assistant benefit from the time and cost savings resulting from employing a medical assistant to perform delegated tasks.

2020 Rulemaking (25 A.A.R. 3705)

R4-16-101 was amended again in this rulemaking, which focused on the Article 5 rules. The changes made to this Section are not relevant to the rules reviewed for this 5YRR.

- | | |
|---|-----|
| 9. <u>Has the agency received any business competitiveness analyses of the rules?</u> | No |
| 10. <u>How the agency completed the action indicated in the agency’s previous 5YRR:</u> | Yes |

² Id.

In a 5YRR approved by the Council on December 5, 2017, the Board indicated it intended to amend all of the reviewed rules. This was completed in a rulemaking that went into effect on March 9, 2019 (*See* 25 A.A.R. 145).

11. A determination after analysis 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 persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The Board determined the benefits of the rules outweigh the minor costs of the rules and impose the least burden and costs on medical assistants and those who directly supervise medical assistants. A licensee who disagrees with a Board decision is entitled to file a motion for rehearing or review of the decision. Filing a motion involves preparing a written statement specifying the grounds for the rehearing or review. An individual who files a motion does so because the individual has determined the minor cost of doing so is outweighed by the potential to have the decision changed.

By definition at A.R.S. § 32-1401, the Board is required to specify educational programs approved for a medical assistant. Requiring a medical assistant to meet educational requirements protects public health and safety. An individual who wishes to be a medical assistant voluntarily complies with the educational requirement because the individual has determined the cost of doing so is outweighed by the benefits from being a medical assistant.

Except for certain ministerial tasks, the work of a medical assistant must be performed under direct supervision (*See* A.R.S. § 32-1456). A medical professional that voluntarily chooses to incur the financial and time costs of directly supervising a medical assistant does so because the medical professional has determined those costs are outweighed by the time and cost-saving benefits from having delegated tasks performed by the medical assistant.

12. Are the rules more stringent than corresponding federal laws? No

No federal law is applicable to the reviewed rules.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

Medical assistants are not licensed by the Board. None of the rules requires issuance of a regulatory permit.

14. Proposed course of action:

The proposed amendment is being made to bring the rules in line with new statutory language. Upon information and belief, HB 2266 was proposed in response to concerns from the regulated community

related to the Board's 2019 rule change that eliminated this option. Additionally, the Agency plans to open a docket and accept public comments regarding this proposed rule change. The Agency anticipates submitting a rulemaking to the Council in January 2023 after the public comment period for community to weigh in on the proposed changes.

4 A.A.C. 16	Arizona Administrative Code	Title 4
CHAPTER 16. ARIZONA MEDICAL BOARD		

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 16. ARIZONA MEDICAL BOARD

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. ARIZONA MEDICAL BOARD

Authority: A.R.S. § 32-1401 et seq.

Supp. 21-4

Editor’s Note: Supp. 16-1 has rules amended as final exempt rules. The proposed exempt rules were published on the Board’s website for 30 days and the end which no additional public comments were received (Supp. 16-1).

Editor’s Note: Supp. 15-4 has rules that were submitted as final exempt rules. Pursuant to Laws 2015, Chapter 251, Section 3, the Board was required to provide public notice and an opportunity for the public to comment on its proposed exempt rules. Three public meetings were conducted. Even though the proposed exempt rules were not published in the Register, the Office of the Secretary of State makes a distinction between exempt rulemakings and final exempt rulemakings. Exempt rulemakings are those that are submitted to the Office of the Secretary of State without receiving public comment (Supp. 15-4).

Editor’s Note: The name of the Allopathic Board of Medical Examiners was changed to the Arizona Medical Board by Laws 2002, Ch. 254, § 9, effective August 22, 2002 (Supp. 03-2).

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Article 1, consisting of Sections R4-16-101 through R4-16-106, adopted effective June 1, 1984.

Former Article 1, consisting of Sections R4-16-01 through R4-16-16, repealed effective June 1, 1984 (Supp. 84-3).

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CHAPTER 16. ARIZONA MEDICAL BOARD

ARTICLE 1. GENERAL PROVISIONS

R4-16-101. Definitions

Unless the context otherwise requires, definitions prescribed under A.R.S. § 32-1401 and the following apply to this Chapter:

1. "ACLS" means advanced cardiac life support performed according to certification standards of the American Heart Association.
2. "Agent" means an item or element that causes an effect.
3. "Approved medical assistant training program" means a program accredited by one of the following:
 - a. The Commission on Accreditation of Allied Health Education Programs; or
 - b. The Accrediting Bureau of Health Education Schools.
4. "BLS" means basic life support performed according to certification standards of the American Heart Association.
5. "Capnography" means monitoring the concentration of exhaled carbon dioxide of a sedated patient to determine the adequacy of the patient's ventilatory function.
6. "Case" means a file opened by a member of the Board's investigative staff in which to maintain documents and evidence relating to an allegation of unprofessional conduct made against an applicant or licensee.
7. "Deep sedation" means a drug-induced depression of consciousness during which a patient:
 - a. Cannot be easily aroused, but
 - b. Responds purposefully following repeated or painful stimulation, and
 - c. May partially lose the ability to maintain ventilatory function.
8. "Discharge" means a written or electronic documented termination of office-based surgery to a patient.
9. "Drug" means the same as in A.R.S. § 32-1901.
10. "Emergency" means an immediate threat to the life or health of a patient.
11. "Emergency drug" means a drug that is administered to a patient in an emergency.
12. "General Anesthesia" means a drug-induced loss of consciousness during which a patient:
 - a. Cannot be roused even with painful stimulus; and
 - b. May partially or completely lose the ability to maintain ventilatory, neuromuscular, or cardiovascular function or airway.
13. "Health care professional" means a registered nurse defined in A.R.S. § 32-1601, registered nurse practitioner defined in A.R.S. § 32-1601, physician assistant defined in A.R.S. § 32-2501, and any individual authorized to perform surgery according to A.R.S. Title 32 who participates in office-based surgery using sedation at a physician's office.
14. "Informed consent" means advising a patient of the:
 - a. Purpose for and alternatives to office-based surgery using sedation,
 - b. Associated risks of office-based surgery using sedation, and
 - c. Possible benefits and complications from the office-based surgery using sedation.
15. "Inpatient" has the same meaning as in A.A.C. R9-10-201.
16. "Investigative staff" means Board staff employed to gather documents and evidence regarding an allegation of unprofessional conduct made against an applicant or licensee.
17. "Investigation supervisor" means the manager of the Board's investigations department or the manager's designee.
18. "Lead board member" means the Board chair or the Board chair's designee.
19. "Malignant hyperthermia" means a life-threatening condition in an individual who has a genetic sensitivity to inhalant anesthetics or depolarizing neuromuscular blocking drugs that occurs during or after the administration of an inhalant anesthetic or depolarizing neuromuscular blocking drug.
20. "Minimal Sedation" means a drug-induced state during which:
 - a. A patient responds to verbal commands,
 - b. Cognitive function and coordination may be impaired, and
 - c. A patient's ventilatory and cardiovascular functions are unaffected.
21. "Moderate Sedation" means a drug-induced depression of consciousness during which:
 - a. A patient responds to verbal commands or light tactile stimulation, and
 - b. No interventions are required to maintain ventilatory or cardiovascular function.
22. "Monitor" means to assess the condition of a patient.
23. "*Office-based surgery*" means a medical procedure conducted in a physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center. (A.R.S. § 32-1401(20)).
24. "PALS" means pediatric life support performed according to certification standards of the American Academy of Pediatrics or the American Heart Association.
25. "Patient" means an individual receiving office-based surgery using sedation.
26. "Physician" has the same meaning as doctor of medicine as defined in A.R.S. § 32-1401.
27. "Rescue" means to correct adverse physiologic consequences of a level of sedation that is deeper than intended and return the patient to the intended level of sedation.
28. "Sedation" means minimum sedation, moderate sedation, or deep sedation.
29. "Staff member" means an individual who:
 - a. Is not a health care professional, and
 - b. Assists with office-based surgery using sedation under the supervision of the physician performing the office-based surgery using sedation.
30. "Supervising medical consultant" means the Chief Medical Consultant employed by the Board or the Chief Medical Consultant's designee.

CHAPTER 16. ARIZONA MEDICAL BOARD

31. "Transfer" means to physically move a patient from a physician's office to a licensed health care institution.

Historical Note

Former Rule 12. Former Section R4-16-01 repealed, new Section R4-16-101 adopted effective June 1, 1984 (Supp. 84-3). Section repealed, new Section renumbered from R4-16-103 effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Former Section R4-16-101 recodified to R4-16-102 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

New Section made by final rulemaking at 12 A.A.R. 823, effective February 23, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1). Amended by final rulemaking at 25 A.A.R. 145, effective March 9, 2019 (Supp. 19-1). Amended by final rulemaking at 25 A.A.R. 3705, effective February 1, 2020 (Supp. 19-4).

R4-16-102. Continuing Medical Education

- A.** A physician holding an active license to practice medicine in this state shall complete 40 credit hours of the continuing medical education required by A.R.S. § 32-1434 during the two calendar years preceding biennial registration.
1. A physician who is authorized to prescribe schedule II controlled substances and holds a valid U.S. Drug Enforcement Administration registration number shall complete at least three hours of opioid-related, substance-use-disorder-related, or addiction-related continuing medical education during each renewal cycle;
 2. One hour of credit is allowed for each clock hour of participation in continuing medical education activities, unless otherwise designated in subsection (B); and
 3. The physician may not carry excess hours of continuing medical education over to another two-year cycle.
- B.** A physician may claim continuing medical education for the following:
1. Participating in an internship, residency, or fellowship at a teaching institution approved by the American Medical Association, the Association of American Medical Colleges, or the American Osteopathic Association. A physician may claim one credit hour of continuing medical education for each one day of training in a full-time approved program, or for a less than full-time training on a pro rata basis. In this subsection teaching institutions define "full-time."
 2. Participating in an education program for an advanced degree in a medical or medically-related field in a teaching institution approved by the American Medical Association, the Association of American Medical Colleges, or the American Osteopathic Association. A physician may claim one credit hour of continuing medical education for each one day of full-time study or less than a full-time study on a pro rata basis. In this subsection teaching institutions define "full-time".
 3. Participating in full-time research in a teaching institution approved by the American Medical Association, the Association of American Medical Colleges, or the American Osteopathic Association. A physician may claim one credit hour of continuing medical education for each one day of full-time research, or less than full-time research on a pro rata basis. In this subsection teaching institutions define "full-time".
 4. Participating in an education program certified as Category 1 by an organization accredited by the Accreditation Council for Continuing Medical Education, 515 North State Street, Suite 2150, Chicago, Illinois 60610.
 5. Participating in a medical education program designed to provide understanding of current developments, skills, procedures, or treatments related to the practice of medicine, that is provided by an organization or institution accredited by the Accreditation Council for Continuing Medical Education.
 6. Serving as an instructor of medical students, house staff, other physicians, or allied health professionals from a hospital or other health care institution with a formal training program, if the instructional activities provide the instructor with understanding of current developments, skills, procedures, or treatments related to the practice of allopathic medicine.
 7. Publishing or presenting a paper, report, or book that deals with current developments, skills, procedures, or treatments related to the practice of allopathic medicine. The physician may claim one credit hour for each hour preparing, writing, and presenting materials:
 - a. Actually published or presented; and
 - b. After the date of publication or presentation.
 8. A credit hour may be earned for any of the following activities that provide an understanding of current developments, skills, procedures, or treatments related to the practice of allopathic medicine:
 - a. Completing a medical education program based on self-instruction that uses videotapes, audiotapes, films, filmstrips, slides, radio broadcasts, or computers;
 - b. Reading scientific journals and books;
 - c. Preparing for specialty board certification or recertification examinations;
 - d. Participating on a staff or quality of care committee, or utilization review committee in a hospital, health care institution, or government agency.
- C.** If a physician holding an active license to practice medicine in this state fails to meet the continuing medical education requirements under subsection (A) because of illness, military service, medical or religious missionary activity, or residence in a foreign country, upon written application, the Board shall grant an extension of time to complete the continuing medical education.
- D.** The Board shall mail to each physician a license renewal form that includes a section regarding continuing medical education compliance. The physician shall sign and return the form certified under penalty of perjury that the continuing medical education requirements under subsection (A) are satisfied for the two-calendar-year period preceding biennial renewal. Failure to receive the license renewal form under subsection (A) shall not relieve the physician of the requirements of subsection (A). The Board may randomly audit a physician to verify compliance with the continuing medical education requirements under subsection (A).

CHAPTER 16. ARIZONA MEDICAL BOARD

Historical Note

Former Rule 16. Former Section R4-16-02 repealed, new Section R4-16-102 adopted effective June 1, 1984 (Supp. 84-3). Section repealed, new Section renumbered from R4-16-106 effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 1881, effective May 3, 2000 (Supp. 00-2). Former Section R4-16-102 recodified to R4-16-103; New Section R4-16-102 recodified from R4-16-101 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 24 A.A.R. 182, effective March 10, 2018 (Supp. 18-1). Amended by final rulemaking at 25 A.A.R. 145, effective March 9, 2019 (Supp. 19-1).

R4-16-103. Rehearing or Review of Board Decision

- A.** In a contested case or appealable agency action, a party aggrieved by an order of the Board may file a written motion for rehearing or review with the Board under A.R.S. Title 41, Chapter 6, Article 10, specifying the grounds for rehearing or review.
1. A motion for rehearing or review shall be filed with the Board and served no later than 30 days after the decision of the Board.
 2. For purposes of this Section, "service" has the same meaning as in A.R.S. § 41-1092.09.
 3. For purposes of this Section, a document is deemed filed when the Board receives the document.
 4. For purposes of this Section, "party" has the same meaning as in A.R.S. § 41-1001.
- B.** Except as provided in subsection (H), a party is required to file a motion for rehearing or review of a Board decision to exhaust the party's administrative remedies.
- C.** A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- D.** The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings or an order or abuse of discretion, that deprives the moving party of a fair hearing;
 2. Misconduct of the Board, its staff, administrative law judge, or the prevailing party;
 3. Accident or surprise that could have not been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 5. Excessive penalty;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
 7. The decision is the result of a passion or prejudice; or
 8. The findings of fact or decision is not justified by the evidence or is contrary to law.
- E.** The Board may grant a rehearing or review to all or any of the parties and on all or part of the issues for any of the reasons in subsection (D). The Board may take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions, and affirm, modify, or reverse the original decision. The Board shall specify the particular grounds for any order modifying a decision or granting a rehearing. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.
- F.** Not later than 15 days after a decision is issued, the Board on its own initiative may order a rehearing or review for any reason that it might have granted a rehearing or review on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Board may grant a timely-served motion for a rehearing or review for a reason not stated in the motion. In either case, the Board shall specify in the order the grounds for the rehearing or review.
- G.** If a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Board may extend this period for a maximum of 20 days either for good cause or upon written stipulation by the parties. The Board may permit reply affidavits.
- H.** If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for the preservation of the public health, safety, or welfare, the decision may be issued as a final decision without an opportunity for rehearing or review.
- I.** A party that has exhausted the party's administrative remedies may appeal a final order of the Board under A.R.S. Title 12, Chapter 7, Article 6.
- J.** A person that files a complaint with the Board against a licensee:
1. Is not a party to:
 - a. A Board administrative action, decision, or proceeding; or
 - b. A court proceeding for judicial review of a Board decision under A.R.S. §§ 12-901 through 12-914; and
 2. Is not entitled to seek rehearing or review of a Board action or decision under this Section.

Historical Note

Former Rule 17; Amended effective August 19, 1977 (Supp. 77-4). Former Section R4-16-03 repealed, new Section R4-16-103 adopted effective June 1, 1984 (Supp. 84-3). Section R4-16-103 renumbered to R4-16-101 effective September 22, 1995 (Supp. 95-3). New Section adopted effective May 20, 1997 (Supp. 97-2). Amended by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Former Section R4-16-103 recodified to R4-16-204; new Section R4-16-103 recodified from R4-16-102 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 25 A.A.R. 145, effective March 9, 2019 (Supp. 19-1).

ARTICLE 4. MEDICAL ASSISTANTS**R4-16-401. Medical Assistant Training Requirements**

- A.** After the effective date of this Section, a supervising physician or physician assistant shall ensure that before a medical assistant is employed, the medical assistant completes either:

1. An approved training program identified in R4-16-101; or
2. An unapproved training program and successfully passes the medical assistant examination administered by a certifying organization accredited by either the National Commission for Certifying Agencies or the American National Standards Institute.

B. This Section does not apply to any person who:

1. Before February 2, 2000:
 - a. Completed an unapproved medical assistant training program and was employed as a medical assistant after program completion; or
 - b. Was directly supervised by the same physician, physician group, or physician assistant for a minimum of 2000 hours; or
2. Completes a United States Armed Forces medical services training program.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Former Section R4-16-401 recodified to R4-16-501; New Section R4-16-401 recodified from R4-16-301 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Former Section R4-16-401 repealed; New Section R4-16-401 renumbered from R4-16-402 and amended by final rulemaking at 12 A.A.R. 823, effective February 23, 2006 (Supp. 06-1). Amended by final rulemaking at 25 A.A.R. 145, effective March 9, 2019 (Supp. 19-1).

R4-16-402. Authorized Procedures for Medical Assistants

- A.** A medical assistant may perform, under the direct supervision of a physician or a physician assistant, the medical procedures listed in Appendix B, Core Curriculum for Medical Assistants, 2015 edition of Standards and Guidelines for the Accreditation of Educational Programs in Medical Assisting, published by the Commission on Accreditation of Allied Health Education Programs. This material is incorporated by reference, does not include later amendments or editions, and may be obtained from the publisher at 25400 U.S. Highway 19 N, Suite 158, Clearwater, FL 33763, www.caahep.org, or the Board.
- B.** In addition to the medical procedures in subsection (A), a medical assistant may administer the following under the direct supervision of a physician or physician assistant:
 1. Whirlpool treatments,
 2. Diathermy treatments,
 3. Electronic galvaton stimulation treatments,
 4. Ultrasound therapy,
 5. Massage therapy,
 6. Traction treatments,
 7. Transcutaneous Nerve Stimulation unit treatments,
 8. Hot and cold pack treatments, and
 9. Small volume nebulizer treatments.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Former Section R4-16-402 recodified to R4-16-502; New Section R4-16-402 recodified from R4-16-302 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Former Section R4-16-402 renumbered to R4-16-401; New Section R4-16-402 renumbered from R4-16-403 and amended by final rulemaking at 12 A.A.R. 823, effective February 23, 2006 (Supp. 06-1). Amended by final rulemaking at 25 A.A.R. 145, effective March 9, 2019 (Supp. 19-1).

* **4 A.A.C. 16**

As of February 15, 2022

32-1401. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a valid and existing license to practice medicine.
2. "Adequate records" means legible medical records, produced by hand or electronically, containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.
3. "Advisory letter" means a nondisciplinary letter to notify a licensee that either:
 - (a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.
 - (b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
 - (c) While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.
4. "Approved hospital internship, residency or clinical fellowship program" means a program at a hospital that at the time the training occurred was legally incorporated and that had a program that was approved for internship, fellowship or residency training by the accreditation council for graduate medical education, the association of American medical colleges, the royal college of physicians and surgeons of Canada or any similar body in the United States or Canada approved by the board whose function is that of approving hospitals for internship, fellowship or residency training.
5. "Approved school of medicine" means any school or college offering a course of study that, on successful completion, results in the degree of doctor of medicine and whose course of study has been approved or accredited by an educational or professional association, recognized by the board, including the association of American medical colleges, the association of Canadian medical colleges or the American medical association.
6. "Board" means the Arizona medical board.
7. "Completed application" means that the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board.
8. "Direct supervision" means that a physician, physician assistant licensed pursuant to chapter 25 of this title or nurse practitioner certified pursuant to chapter 15 of this title is within the same room or office suite as the medical assistant in order to be available for consultation regarding those tasks the medical assistant performs pursuant to section 32-1456.
9. "Dispense" means the delivery by a doctor of medicine of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

10. "Doctor of medicine" means a natural person holding a license, registration or permit to practice medicine pursuant to this chapter.
11. "Full-time faculty member" means a physician who is employed full time as a faculty member while holding the academic position of assistant professor or a higher position at an approved school of medicine.
12. "Health care institution" means any facility as defined in section 36-401, any person authorized to transact disability insurance, as defined in title 20, chapter 6, article 4 or 5, any person who is issued a certificate of authority pursuant to title 20, chapter 4, article 9 or any other partnership, association or corporation that provides health care to consumers.
13. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the doctor and the natural or adopted children, father, mother, brothers and sisters of the doctor's spouse.
14. "Letter of reprimand" means a disciplinary letter that is issued by the board and that informs the physician that the physician's conduct violates state or federal law and may require the board to monitor the physician.
15. "Limit" means taking a nondisciplinary action that alters the physician's practice or professional activities if the board determines that there is evidence that the physician is or may be mentally or physically unable to safely engage in the practice of medicine.
16. "Medical assistant" means an unlicensed person who meets the requirements of section 32-1456, has completed an education program approved by the board, assists in a medical practice under the supervision of a doctor of medicine, physician assistant or nurse practitioner and performs delegated procedures commensurate with the assistant's education and training but does not diagnose, interpret, design or modify established treatment programs or perform any functions that would violate any statute applicable to the practice of medicine.
17. "Medically incompetent" means a person who the board determines is incompetent based on a variety of factors, including:
- (a) A lack of sufficient medical knowledge or skills, or both, to a degree likely to endanger the health of patients.
 - (b) When considered with other indications of medical incompetence, failing to obtain a scaled score of at least seventy-five percent on the written special purpose licensing examination.
18. "Medical peer review" means:
- (a) The participation by a doctor of medicine in the review and evaluation of the medical management of a patient and the use of resources for patient care.
 - (b) Activities relating to a health care institution's decision to grant or continue privileges to practice at that institution.
19. "Medicine" means allopathic medicine as practiced by the recipient of a degree of doctor of medicine.
20. "Office based surgery" means a medical procedure conducted in a physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center.
21. "Physician" means a doctor of medicine who is licensed pursuant to this chapter.

22. "Practice of medicine" means the diagnosis, the treatment or the correction of or the attempt or the claim to be able to diagnose, treat or correct any and all human diseases, injuries, ailments, infirmities or deformities, physical or mental, real or imaginary, by any means, methods, devices or instrumentalities, except as the same may be among the acts or persons not affected by this chapter. The practice of medicine includes the practice of medicine alone or the practice of surgery alone, or both.

23. "Restrict" means taking a disciplinary action that alters the physician's practice or professional activities if the board determines that there is evidence that the physician is or may be medically incompetent or guilty of unprofessional conduct.

24. "Special purpose licensing examination" means an examination that is developed by the national board of medical examiners on behalf of the federation of state medical boards for use by state licensing boards to test the basic medical competence of physicians who are applying for licensure and who have been in practice for a considerable period of time in another jurisdiction and to determine the competence of a physician who is under investigation by a state licensing board.

25. "Teaching hospital's accredited graduate medical education program" means that the hospital is incorporated and has an internship, fellowship or residency training program that is accredited by the accreditation council for graduate medical education, the American medical association, the association of American medical colleges, the royal college of physicians and surgeons of Canada or a similar body in the United States or Canada that is approved by the board and whose function is that of approving hospitals for internship, fellowship or residency training.

26. "Teaching license" means a valid license to practice medicine as a full-time faculty member of an approved school of medicine or a teaching hospital's accredited graduate medical education program.

27. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

(a) Violating any federal or state laws, rules or regulations applicable to the practice of medicine.

(b) Intentionally disclosing a professional secret or intentionally disclosing a privileged communication except as either act may otherwise be required by law.

(c) Committing false, fraudulent, deceptive or misleading advertising by a doctor of medicine or the doctor's staff, employer or representative.

(d) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by any court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(e) Failing or refusing to maintain adequate records on a patient.

(f) Exhibiting a pattern of using or being under the influence of alcohol or drugs or a similar substance while practicing medicine or to the extent that judgment may be impaired and the practice of medicine detrimentally affected.

(g) Using controlled substances except if prescribed by another physician for use during a prescribed course of treatment.

(h) Prescribing or dispensing controlled substances to members of the physician's immediate family.

(i) Prescribing, dispensing or administering schedule II controlled substances as prescribed by section 36-2513 or the rules adopted pursuant to section 36-2513, including amphetamines and similar schedule II

sympathomimetic drugs in the treatment of exogenous obesity for a period in excess of thirty days in any one year, or the nontherapeutic use of injectable amphetamines.

- (j) Prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.
- (k) Dispensing a schedule II controlled substance that is an opioid, except as provided in section 32-1491.
- (l) Signing a blank, undated or predated prescription form.
- (m) Committing conduct that the board determines is gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.
- (n) Representing that a manifestly incurable disease or infirmity can be permanently cured, or that any disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if this is not true.
- (o) Refusing to divulge to the board on demand the means, method, procedure, modality of treatment or medicine used in the treatment of a disease, injury, ailment or infirmity.
- (p) Having action taken against a doctor of medicine by another licensing or regulatory jurisdiction due to that doctor's mental or physical inability to engage safely in the practice of medicine or the doctor's medical incompetence or for unprofessional conduct as defined by that jurisdiction and that corresponds directly or indirectly to an act of unprofessional conduct prescribed by this paragraph. The action taken may include refusing, denying, revoking or suspending a license by that jurisdiction or a surrendering of a license to that jurisdiction, otherwise limiting, restricting or monitoring a licensee by that jurisdiction or placing a licensee on probation by that jurisdiction.
- (q) Having sanctions imposed by an agency of the federal government, including restricting, suspending, limiting or removing a person from the practice of medicine or restricting that person's ability to obtain financial remuneration.
- (r) Committing any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.
- (s) Violating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under this chapter.
- (t) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision of this chapter.
- (u) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine or if applying for privileges or renewing an application for privileges at a health care institution.
- (v) Charging a fee for services not rendered or dividing a professional fee for patient referrals among health care providers or health care institutions or between these providers and institutions or a contractual arrangement that has the same effect. This subdivision does not apply to payments from a medical researcher to a physician in connection with identifying and monitoring patients for a clinical trial regulated by the United States food and drug administration.
- (w) Obtaining a fee by fraud, deceit or misrepresentation.

(x) Charging or collecting a clearly excessive fee. In determining whether a fee is clearly excessive, the board shall consider the fee or range of fees customarily charged in this state for similar services in light of modifying factors such as the time required, the complexity of the service and the skill requisite to perform the service properly. This subdivision does not apply if there is a clear written contract for a fixed fee between the physician and the patient that has been entered into before the provision of the service.

(y) Committing conduct that is in violation of section 36-2302.

(z) Using experimental forms of diagnosis and treatment without adequate informed patient consent, and without conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee as approved by the United States food and drug administration or its successor agency.

(aa) Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the physician-patient relationship, was in a dating or engagement relationship with the licensee. For the purposes of this subdivision, "sexual conduct" includes:

(i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.

(ii) Making sexual advances, requesting sexual favors or engaging in any other verbal conduct or physical contact of a sexual nature.

(iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

(bb) Procuring or attempting to procure a license to practice medicine or a license renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or an agency.

(cc) Representing or claiming to be a medical specialist if this is not true.

(dd) Maintaining a professional connection with or lending one's name to enhance or continue the activities of an illegal practitioner of medicine.

(ee) Failing to furnish information in a timely manner to the board or the board's investigators or representatives if legally requested by the board.

(ff) Failing to allow properly authorized board personnel on demand to examine and have access to documents, reports and records maintained by the physician that relate to the physician's medical practice or medically related activities.

(gg) Knowingly failing to disclose to a patient on a form that is prescribed by the board and that is dated and signed by the patient or guardian acknowledging that the patient or guardian has read and understands that the doctor has a direct financial interest in a separate diagnostic or treatment agency or in nonroutine goods or services that the patient is being prescribed if the prescribed treatment, goods or services are available on a competitive basis. This subdivision does not apply to a referral by one doctor of medicine to another doctor of medicine within a group of doctors of medicine practicing together.

(hh) Using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy, with the exception of treatment of heavy metal poisoning, without:

(i) Adequate informed patient consent.

(ii) Conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee.

(iii) Approval by the United States food and drug administration or its successor agency.

(ii) Prescribing, dispensing or administering anabolic-androgenic steroids to a person for other than therapeutic purposes.

(jj) Exhibiting a lack of or inappropriate direction, collaboration or direct supervision of a medical assistant or a licensed, certified or registered health care provider employed by, supervised by or assigned to the physician.

(kk) Knowingly making a false or misleading statement to the board or on a form required by the board or in a written correspondence, including attachments, with the board.

(ll) Failing to dispense drugs and devices in compliance with article 6 of this chapter.

(mm) Committing conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient.

(nn) Making a representation by a doctor of medicine or the doctor's staff, employer or representative that the doctor is boarded or board certified if this is not true or the standing is not current or without supplying the full name of the specific agency, organization or entity granting this standing.

(oo) Refusing to submit to a body fluid examination or any other examination known to detect the presence of alcohol or other drugs as required by the board pursuant to section 32-1452 or pursuant to a board investigation into a doctor of medicine's alleged substance abuse.

(pp) Failing to report in writing to the Arizona medical board or the Arizona regulatory board of physician assistants any evidence that a doctor of medicine or a physician assistant is or may be medically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely practice medicine or to perform as a physician assistant.

(qq) As a physician who is the chief executive officer, the medical director or the medical chief of staff of a health care institution, failing to report in writing to the board that the hospital privileges of a doctor of medicine have been denied, revoked, suspended, supervised or limited because of actions by the doctor that appear to show that the doctor is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be unable to engage safely in the practice of medicine.

(rr) Claiming to be a current member of the board or its staff or a board medical consultant if this is not true.

(ss) Failing to make patient medical records in the physician's possession promptly available to a physician assistant, a nurse practitioner, a person licensed pursuant to this chapter or a podiatrist, chiropractor, naturopathic physician, osteopathic physician or homeopathic physician licensed under chapter 7, 8, 14, 17 or 29 of this title on receipt of proper authorization to do so from the patient, a minor patient's parent, the patient's legal guardian or the patient's authorized representative or failing to comply with title 12, chapter 13, article 7.1.

(tt) Prescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a physical or mental health status examination of that person or has previously established a doctor-patient relationship. The physical or mental health status examination may be conducted through telehealth as defined in section 36-3601 with

a clinical evaluation that is appropriate for the patient and the condition with which the patient presents, unless the examination is for the purpose of obtaining a written certification from the physician for the purposes of title 36, chapter 28.1. This subdivision does not apply to:

(i) A physician who provides temporary patient supervision on behalf of the patient's regular treating licensed health care professional or provides a consultation requested by the patient's regular treating licensed health care professional.

(ii) Emergency medical situations as defined in section 41-1831.

(iii) Prescriptions written to prepare a patient for a medical examination.

(iv) Prescriptions written or prescription medications issued for use by a county or tribal public health department for immunization programs or emergency treatment or in response to an infectious disease investigation, public health emergency, infectious disease outbreak or act of bioterrorism. For the purposes of this item, "bioterrorism" has the same meaning prescribed in section 36-781.

(v) Prescriptions written or antimicrobials dispensed to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661 by the prescribing or dispensing physician.

(vi) Prescriptions written or prescription medications issued for administration of immunizations or vaccines listed in the United States centers for disease control and prevention's recommended immunization schedule to a household member of a patient.

(vii) Prescriptions for epinephrine auto-injectors written or dispensed for a school district or charter school to be stocked for emergency use pursuant to section 15-157 or for an authorized entity to be stocked pursuant to section 36-2226.01.

(viii) Prescriptions written by a licensee through a telehealth program that is covered by the policies and procedures adopted by the administrator of a hospital or outpatient treatment center.

(ix) Prescriptions for naloxone hydrochloride or any other opioid antagonist approved by the United States food and drug administration that are written or dispensed for use pursuant to section 36-2228 or 36-2266.

(uu) Performing office based surgery using sedation in violation of board rules.

(vv) Practicing medicine under a false or assumed name in this state.

32-1402. Board; appointment; qualifications; term; removal; compensation; immunity; report

A. The Arizona medical board is established. The board consists of twelve members, four of whom shall represent the public and eight of whom shall be actively practicing medicine. One of the four public members shall be a licensed practical nurse or a professional nurse, as defined in chapter 15 of this title, with at least five years' experience. The eight physicians must be from at least three different counties of the state. Not more than five of the board members may be from any one county. Members of the board are appointed by the governor. All appointments shall be made promptly. The governor shall make all appointments pursuant to section 38-211.

B. Each doctor of medicine who is appointed to the board shall have been a resident of this state and actively engaged in the practice of medicine as a licensed physician in this state for at least the five years before appointment.

C. The term of office of a member of the board is five years, commencing on July 1 and terminating on July 1 of the fifth year. Each member is eligible for reappointment for not more than one additional term. However, the term of office for a member of the board appointed to fill a vacancy occasioned other than by expiration of a full term is for the unexpired portion of that term. Each member may be appointed only once to fill a vacancy caused other than by expiration of a term. The governor may reappoint that member to not more than two additional full terms. Each member of the board shall continue to hold office until the appointment and qualification of that member's successor, subject to the following exceptions:

1. A member of the board, after notice and a hearing before the governor, may be removed on a finding by the governor of continued neglect of duty, incompetence, or unprofessional or dishonorable conduct, in which event that member's term shall end when the governor makes this finding.

2. The term of any member automatically ends:

(a) On death.

(b) On written resignation submitted to the board chairman or to the governor.

(c) On absence from the state for a period of more than six months.

(d) For failure to attend three consecutive meetings of the board.

(e) Five years after retirement from the active practice of medicine.

D. The board shall annually elect, from among its membership, a chairman, a vice-chairman and a secretary, who shall hold their respective offices at the pleasure of the board.

E. Board members are eligible to receive compensation in the amount of up to two hundred fifty dollars per day for each day of actual service in the business of the board, including time spent in preparation for and attendance at board meetings, and all expenses necessarily and properly incurred in attending meetings of the board.

F. Members of the board are personally immune from suit with respect to all acts done and actions taken in good faith and in furtherance of the purposes of this chapter.

G. The board shall submit a written report to the governor, the Arizona regulatory board of physician assistants and the members of the health and human services committee of the senate and the health committee of the house of representatives, or their successor committees, no later than August 31 of each year on the board's licensing and disciplinary activities for the previous fiscal year. The report must include both of the following:

1. Information regarding staff turnover that indicates whether the person was temporary, part-time or full-time and in which department or division the person worked.

2. The number of investigators who have been hired and how many of them have completed the investigator training program required by section 32-1405.

H. Public members appointed to the board may submit a separate written report to the governor by August 31 of each year setting forth their comments relative to the board's licensing and disciplinary activities for the previous fiscal year.

[32-1403. Powers and duties of the board; compensation; immunity; committee on executive director selection and retention](#)

A. The primary duty of the board is to protect the public from unlawful, incompetent, unqualified, impaired or unprofessional practitioners of allopathic medicine through licensure, regulation and rehabilitation of the profession in this state. The powers and duties of the board include:

1. Ordering and evaluating physical, psychological, psychiatric and competency testing of licensed physicians and candidates for licensure as may be determined necessary by the board.
2. Initiating investigations and determining on its own motion whether a doctor of medicine has engaged in unprofessional conduct or provided incompetent medical care or is mentally or physically unable to engage in the practice of medicine.
3. Developing and recommending standards governing the profession.
4. Reviewing the credentials and the abilities of applicants whose professional records or physical or mental capabilities may not meet the requirements for licensure or registration as prescribed in article 2 of this chapter in order for the board to make a final determination whether the applicant meets the requirements for licensure pursuant to this chapter.
5. Disciplining and rehabilitating physicians.
6. Engaging in a full exchange of information with the licensing and disciplinary boards and medical associations of other states and jurisdictions of the United States and foreign countries and the Arizona medical association and its components.
7. Directing the preparation and circulation of educational material the board determines is helpful and proper for licensees.
8. Adopting rules regarding the regulation and the qualifications of doctors of medicine.
9. Establishing fees and penalties as provided pursuant to section 32-1436.
10. Delegating to the executive director the board's authority pursuant to section 32-1405 or 32-1451. The board shall adopt substantive policy statements pursuant to section 41-1091 for each specific licensing and regulatory authority the board delegates to the executive director.
11. Determining whether a prospective or current Arizona licensed physician has the training or experience to demonstrate the physician's ability to treat and manage opiate-dependent patients as a qualifying physician pursuant to 21 United States Code section 823(g)(2)(G)(ii).

B. The board may appoint one of its members to the jurisdiction arbitration panel pursuant to section 32-2907, subsection B.

C. There shall be no monetary liability on the part of and no cause of action shall arise against the executive director or such other permanent or temporary personnel or professional medical investigators for any act done or proceeding undertaken or performed in good faith and in furtherance of the purposes of this chapter.

D. In conducting its investigations pursuant to subsection A, paragraph 2 of this section, the board may receive and review staff reports relating to complaints and malpractice claims.

E. The board shall establish a program that is reasonable and necessary to educate doctors of medicine regarding the uses and advantages of autologous blood transfusions.

F. The board may make statistical information on doctors of medicine and applicants for licensure under this article available to academic and research organizations.

G. The committee on executive director selection and retention is established consisting of the Arizona medical board and the chairperson and vice chairperson of the Arizona regulatory board of physician assistants. The committee is a public body and is subject to the requirements of title 38, chapter 3, article 3.1. The committee is responsible for appointing the executive director pursuant to section 32-1405. All members of the committee are voting members of the committee. The committee shall elect a chairperson and a vice chairperson when the committee meets but no more frequently than once a year. The chairperson shall call meetings of the committee as necessary, and the vice chairperson may call meetings of the committee that are necessary if the chairperson is not available. The presence of eight members of the committee at a meeting constitutes a quorum. The committee meetings may be held using communications equipment that allows all members who are participating in the meeting to hear each other. If any discussions occur in an executive session of the committee, notwithstanding the requirement that discussions made at an executive session be kept confidential as specified in section 38-431.03, the chairperson and vice chairperson of the Arizona regulatory board of physician assistants may discuss this information with the Arizona regulatory board of physician assistants in executive session. This disclosure of executive session information to the Arizona regulatory board of physician assistants does not constitute a waiver of confidentiality or any privilege, including the attorney-client privilege.

H. The officers of the Arizona medical board and the Arizona regulatory board of physician assistants shall meet twice a year to discuss matters of mutual concern and interest.

I. The board may accept and expend grants, gifts, devises and other contributions from any public or private source, including the federal government. Monies received under this subsection do not revert to the state general fund at the end of a fiscal year.

[32-1403.01. Licensees; profiles; required information; updates; civil penalty](#)

A. The board shall make available to the public a profile of each licensee. The board shall make this information available through an internet website and, if requested, in writing. The profile available to the public may not contain any information received from the federal bureau of investigation relating to a federal criminal records check. The profile shall contain the following information:

1. A description of any conviction of a felony. For purposes of this paragraph, a licensee is deemed to be convicted if the licensee pled guilty, pled no contest or was found guilty by a court of competent jurisdiction.
2. A description of any conviction of a misdemeanor involving moral turpitude that results in disciplinary action. For purposes of this paragraph, a licensee is deemed to be convicted if the licensee pled guilty, pled no contest or was found guilty by a court of competent jurisdiction.
3. All final board disciplinary actions.
4. Any medical malpractice court judgments and any medical malpractice awards or settlements in which a payment is made to a complaining party that results in disciplinary action.
5. The name and location of the licensee's medical school and the date of graduation.
6. The name and location of the institution from which the licensee received graduate medical education and the date that education was completed.
7. The licensee's primary practice location.

B. Each licensee shall submit the information required pursuant to subsection A of this section each year as directed by the board. An applicant for licensure shall submit this information at the time of application. The applicant and licensee shall submit the information on a form prescribed by the board. A licensee shall submit immediately any changes in information required pursuant to subsection A, paragraphs 1, 2 and 4 of this section. The board shall update immediately its internet website to reflect changes in information relating to subsection A, paragraphs 1 through 4 of this section. The board shall update the internet website information at least annually.

C. The board shall provide each licensee with the licensee's profile on request and shall make valid and verifiable corrections to the profile on notification at any time by the licensee. A change made by a licensee to an address or telephone number is subject to the requirements of section 32-1435.

D. It is an act of unprofessional conduct for a licensee to provide erroneous information pursuant to this section. In addition to other disciplinary action, the board may impose a civil penalty of not more than one thousand dollars for each erroneous statement.

E. If the board issues a nondisciplinary order or action against a licensee, the record of the nondisciplinary order or action is available to the public but may not appear on the board's website, except that a practice limitation or restriction, and documentation relating to that action, may appear on the board's website. On request, the board shall send within five business days, either electronically or by mail, information relating to any nondisciplinary order or action against a licensee to a person requesting the information.

32-1404. [Meetings; quorum; committees; rules; posting](#)

A. The board shall hold regular quarterly meetings on a date and at the time and place designated by the chairman. The board shall hold special meetings, including meetings using communications equipment that allows all members participating in the meeting to hear each other, as the chairman determines are necessary to carry out the functions of the board. The board shall hold special meetings on any day that the chairman determines are necessary to carry out the functions of the board. The vice-chairman may call meetings and special meetings if the chairman is not available.

B. The presence of seven board members at a meeting constitutes a quorum. A majority vote of the quorum is necessary for the board to take any action.

C. The chairman may establish committees from the membership of the board and define committee duties necessary to carry out the functions of the board.

D. The board may adopt rules pursuant to title 41, chapter 6 that are necessary and proper to carry out the purposes of this chapter.

E. Meetings held pursuant to subsection A of this section shall be audio and video recorded. Beginning September 2, 2014, the board shall post the video recording on the board's website within five business days after the meeting.

32-1405. [Executive director; compensation; duties; appeal to the board](#)

A. Subject to title 41, chapter 4, article 4, the committee on executive director selection and retention established by section 32-1403 shall appoint an executive director of the board who shall serve at the pleasure of the committee. The executive director shall not be a board member, except that the board may authorize the executive director to represent the board and to vote on behalf of the board at meetings of the federation of state medical boards of the United States.

B. The executive director is eligible to receive compensation set by the board within the range determined under section 38-611.

C. The executive director or the executive director's designee shall:

1. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ, evaluate, dismiss, discipline and direct professional, clerical, technical, investigative and administrative personnel necessary to carry on the work of the board. An investigator shall complete a nationally recognized investigator training program within one year of date of hire. Until an investigator completes a training program, the investigator shall work under the supervision of an investigator who has completed a training program.

2. Set compensation for board employees within the range determined under section 38-611.

3. As directed by the board, prepare and submit recommendations for amendments to the medical practice act for consideration by the legislature.

4. Subject to title 41, chapter 4, article 4, employ medical consultants and agents necessary to conduct investigations, gather information and perform those duties the executive director determines are necessary and appropriate to enforce this chapter.

5. Issue licenses, registrations and permits to applicants who meet the requirements of this chapter.

6. Manage the board's offices.

7. Prepare minutes, records, reports, registries, directories, books and newsletters and record all board transactions and orders.

8. Collect all monies due and payable to the board.

9. Pay all bills for authorized expenditures of the board and its staff.

10. Prepare an annual budget.

11. Submit a copy of the budget each year to the governor, the speaker of the house of representatives and the president of the senate.

12. Initiate an investigation if evidence appears to demonstrate that a physician may be engaged in unprofessional conduct or may be medically incompetent or mentally or physically unable to safely practice medicine.

13. Issue subpoenas if necessary to compel the attendance and testimony of witnesses and the production of books, records, documents and other evidence.

14. Provide assistance to the attorney general in preparing and sign and execute disciplinary orders, rehabilitative orders and notices of hearings as directed by the board.

15. Enter into contracts for goods and services pursuant to title 41, chapter 23 that are necessary to carry out board policies and directives.

16. Execute board directives.

17. Manage and supervise the operation of the Arizona regulatory board of physician assistants.

18. Issue licenses to physician assistant applicants who meet the requirements of chapter 25 of this title.

19. Represent the board with the federal government, other states or jurisdictions of the United States, this state, political subdivisions of this state, the news media and the public.

20. On behalf of the Arizona medical board, enter into stipulated agreements with persons under the jurisdiction of either the Arizona medical board or the Arizona regulatory board of physician assistants for the treatment, rehabilitation and monitoring of chemical substance abuse or misuse.

21. Review all complaints filed pursuant to section 32-1451. The executive director shall submit all medical complaints alleging harm as a result of patient care to a medical consultant for review. The executive director shall submit to the medical consultant only those medical complaints that involve a standard of care issue and that require medical training and expertise to determine whether a violation has occurred. If delegated by the board, the executive director may also dismiss a complaint if the complaint is without merit. The executive director shall not dismiss a complaint if a court has entered a medical malpractice judgment against a physician. The executive director shall submit a report of the cases dismissed with the complaint number, the name of the physician and the investigation timeline to the board for review at its regular board meetings.

22. If delegated by the board, directly refer cases to a formal hearing.

23. If delegated by the board, close cases resolved through mediation.

24. If delegated by the board, issue advisory letters.

25. If delegated by the board, enter into a consent agreement if there is evidence of danger to the public health and safety.

26. If delegated by the board, grant uncontested requests for inactive status and cancellation of a license pursuant to sections 32-1431 and 32-1433.

27. If delegated by the board, refer cases to the board for a formal interview.

28. Perform all other administrative, licensing or regulatory duties required by the board.

29. Disseminate any information received from the office of ombudsman-citizens aide to the board at its regular board meetings.

D. Medical consultants and agents appointed pursuant to subsection C, paragraph 4 of this section are eligible to receive compensation determined by the executive director in an amount not to exceed two hundred dollars for each day of service.

E. A person who is aggrieved by an action taken by the executive director pursuant to subsection C, paragraphs 21 through 27 of this section or section 32-1422, subsection E may request the board to review that action by filing with the board a written request within thirty days after that person is notified of the executive director's action by personal delivery or, if the notification is mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the executive director's action. On review, the board shall approve, modify or reject the executive director's action.

32-1406. Arizona medical board fund

A. The Arizona medical board fund is established. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies collected under the provisions of this chapter in the state general fund and deposit the remaining ninety per cent in the Arizona medical board fund.

B. Monies deposited in the fund are subject to section 35-143.01.

32-1407. Jurisdiction arbitration panel

A. When the board receives a complaint concerning a physician who is also licensed pursuant to chapter 29 of this title, the board shall immediately notify the board of homeopathic and integrated medicine examiners. If the boards disagree and if both boards continue to claim jurisdiction over the dual licensee, an arbitration panel shall decide jurisdiction pursuant to section 32-2907, subsections B, C, D and E.

B. If the licensing boards decide without resorting to arbitration which board or boards shall conduct the investigation, the board or boards conducting the investigation shall transmit all investigation materials, findings and conclusions to the other board with which the physician is licensed. The board or boards shall review this information to determine if disciplinary action shall be taken against the physician.

32-1408. Preceptorship awareness campaign: definitions

A. The board shall develop a preceptorship awareness campaign that educates medical professionals who are licensed pursuant to this chapter on how to become and the benefits of being a medical preceptor for students.

B. For the purposes of this section:

1. "Medical preceptor" means a medical professional who is licensed pursuant to this chapter and who maintains an active practice in this state.

2. "Preceptorship":

(a) Means a mentoring experience in which a medical preceptor provides a program of personalized instruction, training and supervision to a student, which may include educating the student about dispensing drugs and devices, to enable the student to obtain a medical professional degree to become licensed pursuant to this chapter.

(b) Does not include mentoring for medical services that are prescribed in section 36-2301.01, subsection C, paragraph 1.

3. "Student" means an individual who is matriculating at the graduate level at an accredited institution of higher education in this state and who is seeking a medical professional degree to become licensed pursuant to this chapter.

32-1421. Exemptions from licensing requirements

A. This article does not apply to any person while engaged in:

1. The provision of medical assistance in case of an emergency.

2. The administration of family remedies including the sale of vitamins, health foods or health food supplements or any other natural remedies, except drugs or medicines for which an authorized prescription is required by law.

3. The practice of religion, treatment by prayer or the laying on of hands as a religious rite or ordinance.

4. The practice of any of the healing arts of and by Indian tribes in this state.

5. The lawful practice of any of the healing arts to the extent authorized by a license issued by this state.

6. Activities or functions that do not require the exercise of a doctor of medicine's judgment for their performance, are not in violation of the laws of this state and are usually or customarily delegated by a doctor of medicine under the doctor's direction or supervision or are performed in accordance with the approval of a committee of physicians in a licensed health care institution.

7. The official duties of a medical officer in the armed forces of the United States, the United States department of veterans affairs or the United States public health service or their successor agencies, if the duties are restricted to federal lands.

8. Any act, task or function competently performed by a physician assistant in the proper performance of the physician assistant's duties.

9. The emergency harvesting of donor organs by a doctor of medicine or team of doctors of medicine licensed to practice medicine in another state or country for use in another state or country.

B. This article does not apply to:

1. A doctor of medicine residing in another jurisdiction who is authorized to practice medicine in that jurisdiction, if the doctor engages in actual single or infrequent consultation with a doctor of medicine licensed in this state and if the consultation regards a specific patient or patients.

2. A doctor of medicine who is licensed to practice in another jurisdiction if the doctor engages in the practice of medicine that is limited to patients with whom the doctor has an already established doctor-patient relationship and who reside outside this jurisdiction when both the doctor and the patient are physically in this state for not more than sixty consecutive days. For the purposes of this paragraph, "patient" means a person who is not a resident of this state and who is an athlete or a professional entertainer.

32-1422. Basic requirements for granting a license to practice medicine; credentials verification

A. An applicant for a license to practice medicine in this state pursuant to this article shall meet each of the following basic requirements:

1. Graduate from an approved school of medicine or receive a medical education that the board deems to be of equivalent quality.

2. Successfully complete an approved twelve-month hospital internship, residency or clinical fellowship program.

3. Have the physical and mental capability to safely engage in the practice of medicine.

4. Have a professional record that indicates that the applicant has not committed any act or engaged in any conduct that would constitute grounds for disciplinary action against a licensee under this chapter.

5. Not have had a license to practice medicine revoked by a medical regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

6. Not be currently under investigation, suspension or restriction by a medical regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter. If the applicant is under investigation by a medical regulatory board in another jurisdiction, the board shall suspend the application process and may not issue or deny a license to the applicant until the investigation is resolved.

7. Not have surrendered a license to practice medicine in lieu of disciplinary action by a medical regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
8. Pay all fees required by the board.
9. Complete the application as required by the board.
10. Complete a training unit as prescribed by the board relating to the requirements of this chapter and board rules. The applicant shall submit proof with the application form of having completed the training unit.
11. Have submitted directly to the board, electronically or by hard copy, verification of the following:
 - (a) Licensure from every state in which the applicant has ever held a medical license.
 - (b) All medical employment for the five years preceding application. If the applicant is employed by a hospital or medical group or organization, the board shall accept the confirmation required under this subdivision from the applicant's employer. For the purposes of this subdivision, medical employment includes all medical professional activities.
12. Have submitted a full set of fingerprints to the board for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
 - B. The board may require the submission of credentials or other evidence, written and oral, and make any investigation it deems necessary to adequately inform itself with respect to an applicant's ability to meet the requirements prescribed by this section, including a requirement that the applicant for licensure undergo a physical examination, a mental evaluation and an oral competence examination and interview, or any combination thereof, as the board deems proper.
 - C. In determining if the requirements of subsection A, paragraph 4 of this section have been met, if the board finds that the applicant committed an act or engaged in conduct that would constitute grounds for disciplinary action, the board shall determine to its satisfaction that the conduct has been corrected, monitored and resolved. If the matter has not been resolved, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.
 - D. In determining if the requirements of subsection A, paragraph 6 of this section have been met, if another jurisdiction has taken disciplinary action against an applicant, the board shall determine to its satisfaction that the cause for the action was corrected and the matter resolved. If the matter has not been resolved by that jurisdiction, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.
 - E. The board may delegate authority to the executive director to deny licenses if applicants do not meet the requirements of this section.
 - F. Any credential information required to be submitted to the board pursuant to this article must be submitted, electronically or by hard copy, from the primary source where the document or information originated, except that the board may accept primary-source verified credentials from a credentials verification service approved by the board. The board is not required to verify any documentation or information received by the board from a credentials verification service that has been approved by the board. If an applicant is unable to provide a document or information from the primary source due to no fault of the applicant, the executive director shall forward the issue to the full board for review and

determination. The board shall adopt rules establishing the criteria that must be met in order to waive a documentation requirement of this article.

32-1422.01. Expedited licensure; medical licensure compact; fingerprinting

Beginning September 1, 2017, applicants for expedited licensure pursuant to section 32-3241 shall submit a full set of fingerprints to the board for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation. Communication between the board and the interstate medical licensure compact commission regarding verification of physician eligibility for licensure under the medical licensure compact may not include any information received from the federal bureau of investigation relating to a state and federal criminal records check performed for the purposes of section 32-3241, section 5, subsection B, paragraph 2.

32-1423. Additional requirements for students graduating from an unapproved allopathic school of medicine

In addition to the basic requirements for licensure prescribed in section 32-1422, any applicant who has graduated from an unapproved school of medicine shall meet each of the following requirements:

1. Be able to read, write, speak, understand and be understood in the English language.
2. Hold a standard certificate issued by the educational council for foreign medical graduates, complete a fifth pathway program as provided in section 32-1424, subsection A, or complete thirty-six months as a full-time assistant professor or in a higher position in an approved school of medicine.
3. Successfully complete an approved twenty-four month hospital internship, residency or clinical fellowship program, in addition to the twelve months required in section 32-1422, subsection A, paragraph 2, for a total of thirty-six months of training unless the applicant successfully completed a fifth pathway program as provided by section 32-1424 or has served as a full-time assistant professor or in a higher position in an approved school of medicine for a total of thirty-six months.

32-1424. Fifth pathway program; licensure

A. In addition to the requirements for licensure prescribed in sections 32-1422 and 32-1423, an applicant for licensure under this article who attended a foreign school of medicine and successfully completed all the formal requirements to receive the degree of doctor of medicine except internship or social service, and is accordingly not eligible for certification by the educational council for foreign medical graduates, may be considered for licensure under this chapter if the applicant meets the following conditions:

1. Satisfactorily completes an approved fifth pathway program of one academic year of supervised clinical training under the direction of an approved school of medicine in the United States.
2. Successfully completes an approved twenty-four month internship, residency or clinical fellowship program upon completion of the fifth pathway program.

B. A document granted by a foreign school of medicine signifying completion of all the formal requirements for graduation from such foreign medical school except internship or social service training, or both, along with certification by the approved school of medicine in the United States of successful completion of the fifth pathway program is deemed the equivalent of a degree of doctor of medicine for purposes of licensure and practice as a physician in this state.

32-1425. Initial licensure

A. An applicant who meets the applicable requirements provided in section 32-1422, 32-1423 or 32-1424, has passed steps one and two of the United States medical licensing examination or one of the examination combinations prescribed in section 32-1426, subsection A, paragraph 6, subdivision (c), items (i) and (ii), has paid the fees required by this chapter and has filed a completed application found by the board to be true and correct is eligible for licensure as a doctor of medicine upon successful passage of step three of the United States medical licensing examination with a scaled score of at least seventy-five if the applicant has passed all three steps within a seven year period.

B. An applicant for licensure applying pursuant to section 32-1422, 32-1423 or 32-1424 may take the examination only after successfully completing six months of a board approved hospital internship, residency or clinical fellowship or fifth pathway program or serving as a full-time assistant professor or in a higher position in a board approved school of medicine in this state.

C. The board shall not grant a license until the applicant meets the requirements for licensure pursuant to this chapter.

32-1426. Licensure by endorsement

A. An applicant who is licensed in another jurisdiction or whose license under this chapter has been revoked or surrendered or has expired and who meets the applicable requirements prescribed in section 32-1422, 32-1423 or 32-1424, has paid the fees required by this chapter and has filed a completed application found by the board to be true and correct is eligible to be licensed to engage in the practice of medicine in this state through endorsement under any one of the following conditions:

1. The applicant is certified by the national board of medical examiners or its successor entity as having successfully passed all three parts of the United States medical licensing examination or its successor examination.
2. The applicant has successfully passed a written examination that the board determines is equivalent to the United States medical licensing examination and that is administered by any state, territory or district of the United States, a province of Canada or the medical council of Canada.
3. The applicant successfully completed the three-part written federation of state medical boards licensing examination administered by any jurisdiction before January 1, 1985 and obtained a weighted grade average of at least seventy-five on the complete examination. Successful completion of the examination shall be achieved in one sitting.
4. The applicant successfully completed the two component federation licensing examination administered after December 1, 1984 and obtained a scaled score of at least seventy-five on each component within a five-year period.
5. The applicant's score on the United States medical licensing examination was equal to the score required by this state for licensure pursuant to section 32-1425.
6. The applicant successfully completed one of the following combinations of examinations:
 - (a) Parts one and two of the national board of medical examiners examination, administered either by the national board of medical examiners or the educational commission for foreign medical graduates, with a successful score determined by the national board of medical examiners and passed either step three of the United States medical licensing examination or component two of the federation licensing examination with a scaled score of at least seventy-five.

(b) The federation licensing examination component one examination and the United States medical licensing step three examination with scaled scores of at least seventy-five.

(c) Each of the following:

(i) Part one of the national board of medical examiners licensing examination with a passing grade as determined by the national board of medical examiners or step one of the United States medical licensing examination with a scaled score of at least seventy-five.

(ii) Part two of the national board of medical examiners licensing examination with a passing grade as determined by the national board of medical examiners or step two of the United States medical licensing examination with a scaled score of at least seventy-five.

(iii) Part three of the national board of medical examiners licensing examination with a passing grade as determined by the national board of medical examiners or step three of the United States medical licensing examination with a scaled score of at least seventy-five or component two of the federation licensing examination with a scaled score of at least seventy-five.

B. The board may require an applicant seeking licensure by endorsement based on successful passage of a written examination or combination of examinations, the most recent of which precedes by more than ten years the application for licensure by endorsement in this state, to take and pass a special purpose licensing examination to assist the board in determining the applicant's ability to safely engage in the practice of medicine. The board may also conduct a records review and physical and psychological assessments, if appropriate, and may review practice history to determine the applicant's ability to safely engage in the practice of medicine.

32-1427. Application; hearing on deficiencies in application; interview; probationary license

A. Each applicant for licensure shall submit a completed application as prescribed by the board together with the fee prescribed in this article. The board may require the submission of any evidence, credentials and other proof necessary for it to verify and determine if the applicant meets the requirements for licensure.

B. Each application submitted pursuant to this section shall contain the oath of the applicant that:

1. All of the information contained in the application and accompanying evidence or other credentials submitted are true.

2. The credentials submitted with the application were procured without fraud or misrepresentation or any mistake of which the applicant is aware and that the applicant is the lawful holder of the credentials.

3. The applicant authorizes the release of any information from any source requested by the board necessary for initial and continued licensure in this state.

C. All applications, completed or otherwise, together with all attendant evidence, credentials and other proof submitted with the applications are the property of the board.

D. The board, promptly and in writing, shall inform an applicant of any deficiency in the application that prevents the application from being processed.

E. On request the board shall grant an applicant who disagrees with the statement of deficiency a hearing before the board at its next regular meeting if there is time at that meeting to hear the matter. The board shall not delay this hearing beyond one regularly scheduled meeting. At any hearing granted pursuant to

this subsection, the burden of proof is on the applicant to demonstrate that the alleged deficiencies do not exist.

F. Applications are considered withdrawn:

1. On the applicant's written request.
2. Except for good cause shown, if the applicant does not appear for an interview with the board.
3. If the applicant does not submit within one year of notification the necessary evidence, credentials or other proof identified by the board as being deficient pursuant to subsection D of this section.

G. The board may deny a license to an applicant who does not meet the requirements of this article.

H. If an applicant does not meet the requirements of section 32-1422, subsection A, paragraph 3 the board may issue a license subject to any of the following probationary conditions:

1. Require the licensee's practice to be supervised by another physician.
2. Restrict the licensee's practice.
3. Require the licensee to continue medical or psychiatric treatment.
4. Require the licensee to participate in a specified rehabilitation program.
5. Require the licensee to abstain from alcohol and other drugs.

I. If the board offers a probationary license to an applicant pursuant to subsection H of this section, it shall notify the applicant in writing of the following:

1. The applicant's specific deficiencies.
2. The probationary period.
3. The applicant's right to reject the terms of probation.
4. If the applicant rejects the terms of probation, the applicant's right to a hearing on the board's denial of the application

32-1428. Pro bono registration

A. The board may issue a pro bono registration to allow a doctor who is not a licensee to practice in this state for a total of up to sixty days each calendar year if the doctor:

1. Holds an active and unrestricted license to practice medicine in a state, territory or possession of the United States or an inactive license pursuant to section 32-1431.
2. Has never had the license revoked or suspended.
3. Is not the subject of an unresolved complaint.
4. Applies for registration on a yearly basis as prescribed by the board.
5. Agrees to render all medical services without accepting a fee or salary or performs only initial or follow-up examinations at no cost to the patient and the patient's family through a charitable organization.

B. The sixty days of practice prescribed pursuant to subsection A of this section may be performed consecutively or cumulatively during each calendar year.

C. For the purpose of meeting the requirements of subsection A of this section, an applicant shall provide the board the name of each state in which the person is licensed or has held a license and the board shall verify with the applicable regulatory board of each state that the applicant is licensed or has held a license, has never had a license revoked or suspended and is not the subject of an unresolved complaint. The board may accept the verification of the information required by subsection A, paragraphs 1, 2 and 3 of this section from each of the other state's regulatory board either electronically or by hard copy.

32-1429. Locum tenens registration

A. The board may issue a registration to allow a doctor of medicine who is not a licensee to provide locum tenens medical services to substitute for or temporarily assist a doctor of medicine who holds an active license pursuant to this chapter or a doctor of osteopathy who holds an active license pursuant to chapter 17 of this title under the following conditions:

1. The applicant holds an active license to practice medicine issued by a state, district, territory or possession of the United States.
2. The applicant provides on forms and in a manner prescribed by the board proof that the applicant meets the applicable requirements of section 32-1422, 32-1423 or 32-1424.
3. The license of the applicant from the jurisdiction in which the applicant regularly practices medicine is current and unrestricted and has not been revoked or suspended for any reason and there are no unresolved complaints or formal charges filed against the applicant with any licensing board.
4. The doctor of medicine or doctor of osteopathy for whom the applicant for registration under this section is substituting or assisting provides to the board a written request for locum tenens registration of the applicant.
5. The applicant pays the fee prescribed under section 32-1436.

B. Locum tenens registration granted pursuant to this section is valid for a period of one hundred eighty consecutive days. A doctor of medicine is eligible to apply for and be granted locum tenens registration once every three years.

32-1430. License renewal; expiration

A. Except as provided in section 32-4301, each person holding an active license to practice medicine in this state shall renew the license every other year on or before the licensee's birthday and shall pay the fee required by this article, accompanied by a completed renewal form. The board shall provide the renewal form online and, on request, shall mail the form to the licensee. A licensee who does not renew an active license as required by this subsection on or before thirty days after the licensee's birthday must also pay a penalty fee as required by this article for late renewal. A licensee's license automatically expires if the licensee does not renew an active license within four months after the licensee's birthday. A person who practices medicine in this state after that person's active license has expired is in violation of this chapter.

B. A person renewing an active license to practice medicine in this state shall provide to the board as part of the renewal process a report of disciplinary actions, restrictions or any other action placed on or against that person's license or practice by another state licensing or disciplinary board or an agency of the federal government. This action may include denying a license or failing the special purpose licensing examination. The report shall include the name and address of the sanctioning agency or health care

institution, the nature of the action taken and a general statement of the charges leading to the action taken.

C. The licensee shall submit proof with the renewal form of having completed a training unit as prescribed by the board relating to the requirements of this chapter and board rules.

D. A person whose license has expired may reapply for a license to practice medicine as provided in this chapter.

32-1431. Inactive license; application; practice prohibitions

A. A person holding a current active license to practice medicine in this state may request an inactive license from the board if both of the following are true:

1. The licensee is not presently under investigation by the board.
2. The board has not commenced any disciplinary proceeding against the licensee.

B. The board may grant an inactive license and waive the renewal fees and requirements for continuing medical education specified by section 32-1434 if the licensee provides evidence to the board's satisfaction that the licensee has totally retired from the practice of medicine in this state and any state, territory and district of the United States or any foreign country and has paid all of the fees required by this chapter before the request. The board may grant pro bono registration pursuant to section 32-1428 to a physician who holds an inactive license under this section.

C. During any period in which a medical doctor holds an inactive license, that person shall not engage in the practice of medicine or continue to hold or maintain a drug enforcement administration controlled substances registration certificate, except as permitted by a pro bono registration pursuant to section 32-1428. Any person who engages in the practice of medicine while on inactive license status is considered to be a person who practices medicine without a license or without being exempt from licensure as provided in this chapter.

D. The board may convert an inactive license to an active license if the applicant pays the renewal fee and presents evidence satisfactory to the board that the applicant possesses the medical knowledge and is physically and mentally able to safely engage in the practice of medicine. The board may require any combination of physical examination, psychiatric or psychological evaluation or successful passage of the special purpose licensing examination or interview it finds necessary to assist it in determining the ability of a physician holding an inactive license to return to the active practice of medicine.

32-1432. Teaching license

A. A board approved school of medicine in this state or a teaching hospital's accredited graduate medical education program in this state may invite a doctor of medicine to provide and promote professional education through lectures, clinics or demonstrations. The doctor of medicine is prohibited from opening an office or designating a place to meet patients or receive calls relating to the practice of medicine in this state outside of the facilities and programs of the approved school or teaching hospital.

B. To receive a teaching license, the doctor of medicine shall:

1. Complete an application as prescribed by the board.
2. Pay all required fees.

3. Meet the basic requirements of section 32-1422 except for those relating to completing an approved hospital internship, residency or clinical fellowship program.

C. A teaching license is limited to a one year period. The doctor of medicine may reapply annually for no more than a total of four years. With each reapplication the doctor of medicine must submit all required fees and a petition from the school or teaching hospital asking the board for continuation of the teaching license.

D. The holder of a teaching license is not exempt from the requirements of this chapter with the exception of the training and examination requirements of this article.

E. A doctor of medicine holding a current teaching license at an approved school of medicine may convert that license into an active license by filing an application and meeting all applicable requirements of this article.

32-1432.01. Education teaching permit

A. The dean of a board approved school of medicine or the chairman of a teaching hospital's accredited graduate medical education program may invite a doctor of medicine who is not licensed in this state to demonstrate and perform medical procedures and surgical techniques for the sole purpose of promoting professional education for students, interns, residents, fellows and doctors of medicine in this state.

B. The chairman or dean of the inviting institution shall provide to the board evidence that an applicant for an educational permit has malpractice insurance in an amount that meets the requirements of the institution and that the applicant accepts all responsibility and liability for the procedures he performs within the scope of his permit. In a letter to the board, the chairman or the dean of the inviting institution shall outline the procedures and techniques that the doctor of medicine shall perform or demonstrate and the dates that this activity will occur. The letter shall also include a summary of the doctor's of medicine educational and professional background and be accompanied by the fee required pursuant to section 32-1436.

C. The inviting institution shall submit the fees and documents required pursuant to subsection B of this section no later than two weeks before the scheduled activity.

D. The board or its staff shall issue an educational teaching permit for no more than five days for each approved activity.

32-1432.02. Training permit; short-term permits; discipline

A. The board shall grant a one year renewable training permit to a person participating in a teaching hospital's accredited internship, residency or clinical fellowship training program to allow that person to function only in the supervised setting of that program. Before the board issues the permit, the person shall comply with the applicable registration requirements of this article and pay the fee prescribed in section 32-1436.

B. If a person who is participating in a teaching hospital's accredited internship, residency or clinical fellowship program must repeat or make up time in the program due to resident progression or other issues, the board may grant that person a training permit if requested to do so by the program's director of medical education or a person who holds an equivalent position. The permit limits the permittee to practicing only in the supervised setting of that program.

C. The board shall grant a training permit to a person who is not licensed in this state and who is participating in a short-term training program of four months or less conducted in an approved school of

medicine or a hospital that has an accredited hospital internship, residency or clinical fellowship program in this state for the purpose of continuing medical education. Before the board issues the permit, the person shall comply with the applicable registration requirements of this article and pay the fee prescribed in section 32-1436.

D. A permittee is subject to the disciplinary regulation of article 3 of this chapter.

32-1432.03. Training permits; approved schools

The executive director may grant a one year training permit to a person who:

1. Participates in a program at an approved school of medicine or a hospital that has an approved hospital internship, residency or clinical fellowship program if the purpose of the program is to exchange technical and educational information.

2. Pays the prescribed fee.

3. Submits a written statement from the dean of the approved school of medicine or from the chairman of a teaching hospital's accredited graduate medical education program that:

(a) Includes a request for the permit and describes the purpose of the exchange program.

(b) Specifies that the host institution will provide liability coverage.

(c) Provides the name of a doctor of medicine who will serve as the preceptor of the host institution and provide appropriate supervision of the participant.

(d) States that the host institution has advised the participant that the participant may serve as a member of an organized medical team but shall not practice medicine independently and that this training does not accrue toward postgraduate training requirements for licensure.

32-1432.04. Medical graduate transitional training permits; requirements; definitions

A. The board or, if delegated, the executive director of the board shall grant a one-year transitional training permit to a graduate of an allopathic school of medicine who is not otherwise eligible to apply for a license to practice or a training permit pursuant to section 32-1432.02 or 32-1432.03 in this state if the applicant meets both of the following conditions:

1. Within a two-year period immediately preceding initial application for a transitional training permit, was either:

(a) Qualified to submit, and submitted, a valid application to an accredited internship or residency program but was not selected for a position.

(b) Selected for a position described in subdivision (a) of this paragraph but ended participation in the program before completion for a reason that would not be considered grounds for disciplinary action pursuant to section 32-1451.

2. Successfully completed steps one and two of the United States medical licensing examination or equivalent exams.

B. The transitional training permit may be renewed for two additional one-year periods if the permittee, in the year preceding an application for renewal, submits complete and valid applications to at least three accredited primary care internship or residency programs and is not selected for an internship or residency

position. The permittee shall provide the board with written documentation of the internship or residency program applications and the nonselections. A permittee may not hold a permit for an aggregate time period of more than thirty-six months.

C. The transitional training permit limits the permittee to function only under the supervision of a qualified physician within the setting of an eligible entity, which includes the following if located in this state:

1. A hospital or behavioral health facility that is Licensed pursuant to title 36, chapter 4.
2. A patient care facility operated by or for any federally recognized American Indian tribe, the Indian health service, the United States veterans administration, a prison or a school or university.
3. A community health center or a federally qualified health center.
4. A private office or clinic where a supervising qualified physician practices and that is not a pain management clinic as defined in section 36-448.01.

D. An eligible entity contracting with or employing a permittee shall:

1. Provide to the permittee, in collaboration with the supervising qualified physician, ongoing clinical training related to the services that may be delegated to the permittee by the supervising qualified physician.
2. Be responsible, along with the supervising qualified physician, for all aspects of the performance of a permittee.
3. Ensure that the health care tasks performed by a permittee are within the permittee's scope of medical training, experience and competence and have been properly delegated and supervised by a qualified physician.
4. Ensure that during the permittee's first six months of full-time practice, all clinical encounters performed by the permittee are under the direct supervision of the supervising qualified physician. Subsequent encounters performed by the permittee after the initial six-month period may be under indirect supervision with direct supervision immediately available from the supervising qualified physician.
5. Ensure that all qualified physician supervision is documented.
6. Ensure that in all clinical or other patient encounters the permittee is clearly identified as a medical graduate in training.
7. Define the employment or contractual relationship with the permittee, including terms of compensation and benefits, billing and reimbursement and general and professional liability coverage.
8. Establish and document a process for evaluating the permittee's performance that includes a review by the supervising qualified physician of all medical records related to the clinical encounters performed by the permittee.

E. The supervising qualified physician may delegate to a permittee the performance of health care tasks that are of a nature typically delegated in an accredited internship or residency program, including the ability to provide delegated telehealth services that are of a similar nature, if all other conditions prescribed in this section are met.

F. Before employing or contracting with a permittee, an eligible entity shall notify the department of health services on a form prescribed by the department, or on an equivalent form from the entity, of all the following information:

1. The types and extent of medical training the entity plans to provide to the permittee.
2. The names of the qualified physicians who will supervise the permittee and the types of health care tasks that may be delegated to the permittee by those supervising qualified physicians.

G. An eligible entity shall post on its public website and submit to the department an annual report that includes all of the following:

1. The number of permittees and supervising qualified physicians employed by or contracted with the entity.
2. The length of time each permittee and supervising qualified physician has been employed by or contracted with the entity.
3. The total number of hours of medical education provided to each permittee.
4. The total number of hours of clinical care provided by each permittee.
5. The number of permittees who obtained a match with an accredited internship or residency program.

H. Before supervising a permittee, a qualified physician shall notify the board in writing of the qualified physician's agreement to serve as a supervising qualified physician. The notification shall include the name of the permittee and the name and location of the eligible entity at which the supervision will occur.

I. Before the board issues or renews a training permit under this section, the applicant or renewing permittee shall comply with the applicable registration requirements of this article and pay the fee, which shall be the same as the fee prescribed for an approved internship pursuant to section 32-1436.

J. This section does not require any eligible entity or qualified physician to establish a program to employ or contract with permittees as described in this section or require any qualified physician to assume supervision responsibilities for a permittee.

K. A permittee under this section:

1. Is subject to the disciplinary regulation of article 3 of this chapter.
2. Per one-year period, shall participate in at least sixty hours of continuing medical education programs approved by the board.
3. Shall notify the board on the permittee's acceptance to an accredited internship or residency program.

L. A supervising qualified physician under this section:

1. Is responsible for all aspects of a permittee's performance whether or not the supervising qualified physician employs the permittee.
2. Is responsible for supervising the permittee and ensuring that the health care tasks performed by the permittee are within the permittee's scope of medical training and experience, are appropriate to the permittee's level of competence and are properly delegated by the supervising qualified physician.

3. May allow a permittee to administer or dispense drugs under the conditions of section 32-1491 if the controlled substance permit under which the drugs are dispensed is either the supervising qualified physician's or the eligible entity's permit.
4. May serve as a supervising qualified physician for only one permittee at any one time.
5. Shall notify the board, the eligible entity and the permittee in writing if the permittee exceeds the scope of the delegated health care tasks to allow the board to investigate.

M. For the purposes of this section:

1. "Direct supervision" means the supervising qualified physician is physically present with the permittee and patient.
2. "Indirect supervision with direct supervision immediately available" means the supervising qualified physician is physically present within the hospital or other eligible entity site of patient care and is immediately available to provide direct supervision of the permittee.
3. "Permittee" means a person who holds a transitional training permit issued pursuant to this section.
4. "Qualified physician" means a physician who possesses a full and unrestricted license issued pursuant to this chapter to engage in the practice of medicine in this state and who is not currently under board discipline.

32-1433. Cancellation of active license

On request of an active licensee, the board may cancel that person's license if both of the following are true:

1. The licensee is not presently under investigation by the board.
2. The board has not commenced any disciplinary proceeding against the licensee.

32-1434. Continuing medical education; audit

- A. A person who holds an active license to practice medicine in this state shall satisfy a continuing medical education requirement that is designed to provide the necessary understanding of current developments, skills, procedures or treatment related to the practice of medicine in such amount and during such period as the board establishes by rule.
- B. Compliance with subsection A of this section shall be documented at such times and in such manner as the board shall establish.
- C. Failure of a person holding an active license to practice medicine to comply with this section without adequate cause being shown is grounds for probation, suspension or revocation of such person's license.
- D. The board shall randomly audit, once every two years, at least ten per cent of physicians to verify continuing medical education compliance.

32-1435. Change of address; costs; penalties

- A. Each active licensee shall promptly and in writing inform the board of the licensee's current residence address, office address and telephone number and of each change in residence address, office address or telephone number that may later occur.

B. The board may assess the costs incurred by the board in locating a licensee and in addition a penalty of not to exceed one hundred dollars against a licensee who fails to comply with subsection A within thirty days from the date of change. Notwithstanding any law to the contrary, monies collected pursuant to this subsection shall be deposited in the Arizona medical board fund.

32-1436. Fees and penalty

A. The board shall by a formal vote, at its annual fall meeting, establish nonrefundable fees and penalties that do not exceed the following:

1. For processing an application for an active license, seven hundred dollars.
2. For issuance of an active license, seven hundred dollars.
3. For an application to reactivate an inactive status license, five hundred dollars.
4. For issuance of a duplicate license, fifty dollars.
5. For renewal of an active license, seven hundred dollars.
6. For late renewal of an active license, an eight hundred dollar penalty.
7. For annual registration of an approved internship, residency, clinical fellowship program or short-term residency program, fifty dollars.
8. For an annual teaching license at an approved school of medicine or at an approved teaching hospital's accredited graduate medical education program, four hundred dollars.
9. For a five day educational teaching permit at an approved school of medicine or at an approved teaching hospital's accredited graduate medical education program, one hundred dollars.
10. For locum tenens registration, five hundred dollars.
11. For the sale of those copies of the annual medical directory that are not distributed free of charge, thirty dollars.
12. For the sale of the annual medical directory on CD-ROM, one hundred dollars.
13. For the sale of computerized tapes or diskettes not requiring programming, one hundred dollars.
14. For verification of a license, ten dollars.
15. For a copy of the minutes to board meetings during the current calendar year, twenty-five dollars for each set of minutes.
16. For copying records, documents, letters, minutes, applications and files, one dollar for the first three pages and twenty-five cents for each additional page.
17. For initial and annual registration to dispense drugs and devices, two hundred dollars.
18. For renewal applications that the board returns to the licensee for proper completion, a fee that does not exceed the cost of processing the incomplete application.

B. The board shall charge additional fees for services that are not required to be provided by this chapter but that the board deems necessary and appropriate to carry out its intent and purpose, except that these fees shall not exceed the actual cost of providing those services.

C. Notwithstanding subsection A of this section, the board may return the license renewal fee on special request.

D. The board shall provide computerized tapes or diskettes free to the management information systems office of the Arizona health care cost containment system.

E. The fee for minutes provided pursuant to this section includes postage. Annual subscription requests and fees for minutes shall be paid before February 1 of each year. Subscriptions for minutes of board meetings are not available for past years.

F. The fee for copying provided in this section includes postage. Copying fees for subpoenaed records shall be as prescribed in section 12-351.

G. The board may collect from the drawer of a dishonored check, draft order or note an amount allowed pursuant to section 44-6852.

32-1437. Training permits; qualified military health professionals

A. The board shall issue a training permit to a qualified military health professional who is practicing allopathic medicine in the United States armed forces and who is discharging the health professional's official duties by participating in a clinical training program based at a civilian hospital affiliated with the United States department of defense.

B. Before the board issues the training permit, the qualified military health professional must submit a written statement from the United States department of defense that the applicant:

1. Is a member of the United States armed forces who is performing duties for and at the direction of the United States department of defense at a location in this state approved by the United States department of defense.

2. Has a current license or is credentialed to practice allopathic medicine in a jurisdiction of the United States.

3. Meets all required qualification standards prescribed pursuant to 10 United States Code section 1094(d) relating to the licensure requirements for health professionals.

4. Has not had a license to practice revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

5. Is not currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

6. Has not surrendered, relinquished or given up a license in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. This paragraph does not prevent the board from considering the request for a training permit of a qualified military health professional who surrendered, relinquished or gave up a license in lieu of disciplinary action by a regulatory board in

another jurisdiction if that regulatory board subsequently reinstated the qualified military health professional's license.

C. The qualified military health professional may not open an office or designate a place to meet patients or receive calls relating to the practice of allopathic medicine in this state outside of the facilities and programs of the approved civilian hospital.

D. The qualified military health professional may not practice outside of the professional's scope of practice.

E. A training permit issued pursuant to this section is valid for one year. The qualified military health professional may apply annually to the board to renew the permit. With each application to renew the qualified military health professional must submit a written statement from the United States department of defense asking the board for continuation of the training permit.

F. The board may not impose a fee to issue or renew a training permit to a qualified military health professional pursuant to this section.

[32-1438. Temporary licensure; requirements; fee](#)

A. Beginning July 1, 2017, the board may issue a temporary license, which may not be renewed or extended, to allow a physician who is not a licensee to practice in this state for a total of up to two hundred fifty consecutive days if the physician meets all of the following requirements:

1. Holds an active and unrestricted license to practice medicine in a state, territory or possession of the United States.
2. Has applied for a license pursuant to section 32-1422 and meets the requirements specified in section 32-1422, subsection A, paragraphs 1 through 7.
3. Has paid any applicable fees.

B. The physician shall submit to the board a notarized affidavit attesting that the physician meets the requirements of subsection A, paragraphs 1 and 2 of this section. The physician shall notify the board immediately if any circumstance specified in subsection A, paragraphs 1 and 2 of this section changes during the application period for a temporary license or while holding a temporary license, at which time the board may suspend, deny or revoke the temporary license. The board may suspend, deny or revoke a temporary license and withdraw the application for initial licensure if the applicant has made a misrepresentation in the attestation required by this section or any other portion of the application pursuant to this chapter.

C. The board shall approve or deny an application under this section within thirty days after an applicant files a complete application. The approval of a temporary license pursuant to this section allows the physician to practice in this state without restriction.

D. If granted, the physician's temporary license expires the earlier of two hundred fifty days after the date the temporary license is granted or on approval or denial of the physician's license application submitted pursuant to section 32-1422.

E. For the purpose of meeting the requirements of subsection A of this section, an applicant shall provide the board the name of each state, territory or possession of the United States in which the person is licensed or has held a license and the board shall verify with the applicable regulatory board that the applicant holds an active and unrestricted license to practice medicine and has never had a license

revoked or suspended or surrendered a license for disciplinary reasons. An applicant shall also provide the board with all medical employment as required by section 32-1422, subsection A. The board may accept the confirmation of this information from each other regulatory board verbally, in writing or through the use of the other regulatory board's website, which shall be followed by either an electronic or hard copy of the verification required by section 32-1422, subsection F before the physician's permanent license is granted. If the board is unable to verify the information within the initial thirty days as required by subsection C of this section, the board may extend the time frame by an additional thirty days to receive the necessary verification.

F. The board may establish a fee in rule for temporary licensure under this section.

32-1439. Specialty certification; prohibited requirement for licensure; definition

A. The board may not require an applicant for licensure pursuant to this article to hold or maintain a specialty certification as a condition of licensure in this state. This subsection does not prohibit the board from considering an applicant's specialty certification as a factor in whether to grant a license to the applicant.

B. For the purposes of this section, "specialty certification" means certification by a board that specializes in one particular area of medicine and that may require examinations in addition to those required by this state to be licensed to practice medicine.

32-1451. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements

A. The board on its own motion may investigate any evidence that appears to show that a doctor of medicine is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of medicine. On written request of a complainant, the board shall review a complaint that has been administratively closed by the executive director and take any action it deems appropriate. Any person may, and a doctor of medicine, the Arizona medical association, a component county society of that association and any health care institution shall, report to the board any information that appears to show that a doctor of medicine is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of medicine. The board or the executive director shall notify the doctor as to the content of the complaint as soon as reasonable. Any person or entity that reports or provides information to the board in good faith is not subject to an action for civil damages. If requested, the board shall not disclose the name of a person who supplies information regarding a licensee's drug or alcohol impairment. It is an act of unprofessional conduct for any doctor of medicine to fail to report as required by this section. The board shall report any health care institution that fails to report as required by this section to that institution's licensing agency.

B. The chief executive officer, the medical director or the medical chief of staff of a health care institution shall inform the board if the privileges of a doctor to practice in that health care institution are denied, revoked, suspended or limited because of actions by the doctor that appear to show that the doctor is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to safely engage in the practice of medicine, along with a general statement of the reasons, including patient chart numbers, that led the health care institution to take the action. The chief executive officer, the medical director or the medical chief of staff of a health care institution shall inform the board if a doctor under investigation resigns or if a doctor resigns in lieu of disciplinary action by the health care institution. Notification shall include a general statement of the reasons for the resignation, including patient chart numbers. The board shall inform all appropriate health care institutions in this state as defined in section 36-401 and the Arizona health care cost containment system administration of a

resignation, denial, revocation, suspension or limitation, and the general reason for that action, without divulging the name of the reporting health care institution. A person who reports information in good faith pursuant to this subsection is not subject to civil liability.

C. The board or, if delegated by the board, the executive director shall require, at the doctor's expense, any combination of mental, physical or oral or written medical competency examinations and conduct necessary investigations, including investigational interviews between representatives of the board and the doctor to fully inform itself with respect to any information filed with the board under subsection A of this section. These examinations may include biological fluid testing and other examinations known to detect the presence of alcohol or other drugs. The board or, if delegated by the board, the executive director may require the doctor, at the doctor's expense, to undergo assessment by a board approved rehabilitative, retraining or assessment program. This subsection does not establish a cause of action against any person, facility or program that conducts an assessment, examination or investigation in good faith pursuant to this subsection.

D. If the board finds, based on the information it receives under subsections A and B of this section, that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the board may restrict a license or order a summary suspension of a license pending proceedings for revocation or other action. If the board takes action pursuant to this subsection, it shall also serve the licensee with a written notice that states the charges and that the licensee is entitled to a formal hearing before the board or an administrative law judge within sixty days.

E. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is not of sufficient seriousness to merit disciplinary action against the license of the doctor, the board or a board committee may take any of the following actions:

1. Dismiss if, in the opinion of the board, the information is without merit.
2. Require the licensee to complete designated continuing medical education courses.
3. File an advisory letter. The licensee may file a written response with the board within thirty days after receiving the advisory letter.

F. If the board finds that it can take rehabilitative or disciplinary action without the presence of the doctor at a formal interview, it may enter into a consent agreement with the doctor to limit or restrict the doctor's practice or to rehabilitate the doctor in order to protect the public and ensure the doctor's ability to safely engage in the practice of medicine. The board may also require the doctor to successfully complete a board approved rehabilitative, retraining or assessment program at the doctor's own expense.

G. The board shall not disclose the name of the person who provided information regarding a licensee's drug or alcohol impairment or the name of the person who files a complaint if that person requests anonymity.

H. If after completing its investigation the board believes that the information is or may be true, it may request a formal interview with the doctor. If the doctor refuses the invitation for a formal interview or accepts and the results indicate that grounds may exist for revocation or suspension of the doctor's license for more than twelve months, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If after completing a formal interview the board finds that the protection of the public requires emergency action, it may order a summary suspension of the license pending formal revocation proceedings or other action authorized by this section.

I. If after completing the formal interview the board finds the information provided under subsection A of this section is not of sufficient seriousness to merit suspension for more than twelve months or revocation of the license, it may take the following actions:

1. Dismiss if, in the opinion of the board, the complaint is without merit.
2. Require the licensee to complete designated continuing medical education courses.
3. File an advisory letter. The licensee may file a written response with the board within thirty days after the licensee receives the advisory letter.
4. Enter into an agreement with the doctor to restrict or limit the doctor's practice or professional activities or to rehabilitate, retrain or assess the doctor in order to protect the public and ensure the doctor's ability to safely engage in the practice of medicine. The board may also require the doctor to successfully complete a board approved rehabilitative, retraining or assessment program at the doctor's own expense pursuant to subsection F of this section.
5. File a letter of reprimand.
6. Issue a decree of censure. A decree of censure is an official action against the doctor's license and may include a requirement for restitution of fees to a patient resulting from violations of this chapter or rules adopted under this chapter.
7. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the doctor concerned. Probation may include temporary suspension for not to exceed twelve months, restriction of the doctor's license to practice medicine, a requirement for restitution of fees to a patient or education or rehabilitation at the licensee's own expense. If a licensee fails to comply with the terms of probation, the board shall serve the licensee with a written notice that states that the licensee is subject to a formal hearing based on the information considered by the board at the formal interview and any other acts or conduct alleged to be in violation of this chapter or rules adopted by the board pursuant to this chapter, including noncompliance with the term of probation, a consent agreement or a stipulated agreement. A licensee shall pay the costs associated with probation monitoring each year during which the licensee is on probation. The board may adjust this amount on an annual basis. The board may allow a licensee to make payments on an installment plan if a financial hardship occurs. A licensee who does not pay these costs within thirty days after the due date prescribed by the board violates the terms of probation.

J. If the board finds that the information provided in subsection A of this section warrants suspension or revocation of a license issued under this chapter, it shall initiate formal proceedings pursuant to title 41, chapter 6, article 10.

K. In a formal interview pursuant to subsection H of this section or in a hearing pursuant to subsection J of this section, the board in addition to any other action may impose a civil penalty in the amount of not less than one thousand dollars nor more than ten thousand dollars for each violation of this chapter or a rule adopted under this chapter.

L. An advisory letter is a public document.

M. Any doctor of medicine who after a formal hearing is found by the board to be guilty of unprofessional conduct, to be mentally or physically unable safely to engage in the practice of medicine or to be medically incompetent is subject to censure, probation as provided in this section, suspension of license or revocation of license or any combination of these, including a stay of action, and for a period of time or permanently and under conditions as the board deems appropriate for the protection of the public

health and safety and just in the circumstance. The board may charge the costs of formal hearings to the licensee who it finds to be in violation of this chapter.

N. If the board acts to modify any doctor of medicine's prescription writing privileges, the board shall immediately notify the state board of pharmacy of the modification.

O. If the board, during the course of any investigation, determines that a criminal violation may have occurred involving the delivery of health care, it shall make the evidence of violations available to the appropriate criminal justice agency for its consideration.

P. The board may divide into review committees of not less than three members, including a public member. The committees shall review complaints not dismissed by the executive director and may take the following actions:

1. Dismiss the complaint if a committee determines that the complaint is without merit.
2. Issue an advisory letter. The licensee may file a written response with the board within thirty days after the licensee receives the advisory letter.
3. Conduct a formal interview pursuant to subsection H of this section. This includes initiating formal proceedings pursuant to subsection J of this section and imposing civil penalties pursuant to subsection K of this section.
4. Refer the matter for further review by the full board.

Q. Pursuant to sections 35-146 and 35-147, the board shall deposit all monies collected from civil penalties paid pursuant to this chapter in the state general fund.

R. Notice of a complaint and hearing is effective by a true copy of it being sent by certified mail to the doctor's last known address of record in the board's files. Notice of the complaint and hearing is complete on the date of its deposit in the mail. The board shall begin a formal hearing within one hundred twenty days of that date.

S. A physician who submits an independent medical examination pursuant to an order by a court or pursuant to section 23-1026 is not subject to a complaint for unprofessional conduct unless, in the case of a court-ordered examination, the complaint is made or referred by a court to the board, or in the case of an examination conducted pursuant to section 23-1026, the complaint alleges unprofessional conduct based on some act other than a disagreement with the findings and opinions expressed by the physician as a result of the examination. For the purposes of this subsection, "independent medical examination" means a professional analysis of medical status that is based on a person's past and present physical, medical and psychiatric history and conducted by a licensee or group of licensees on a contract basis for a court or for a workers' compensation carrier, self-insured employer or claims processing representative if the examination was conducted pursuant to section 23-1026.

T. The board may accept the surrender of an active license from a person who admits in writing to any of the following:

1. Being unable to safely engage in the practice of medicine.
2. Having committed an act of unprofessional conduct.
3. Having violated this chapter or a board rule.

U. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a licensee.

V. In determining the appropriate action under this section, the board may consider a direct or indirect competitive relationship between the complainant and the respondent as a mitigating factor.

32-1451.01. Right to examine and copy evidence; witnesses; documents; testimony; representation

A. In connection with the investigation by the board on its own motion, or as the result of information received pursuant to section 32-1451, subsection A, the board or its duly authorized agents or employees at all reasonable times may examine and copy any documents, reports, records or other physical evidence of the person it is investigating or that is in possession of any hospital, clinic, physician's office, laboratory, pharmacy, public or private agency, health care institution as defined in section 36-401 and health care provider and that relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee to safely practice medicine.

B. For the purpose of all investigations and proceedings conducted by the board:

1. The board on its own initiative or on application of any person involved in the investigation may issue subpoenas to require the attendance and testimony of witnesses or to demand the production for examination or copying of documents or any other physical evidence that relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee to safely practice medicine. Within five days after a person is served with a subpoena that person may petition the board to revoke, limit or modify the subpoena. The board shall do so if in its opinion the evidence required does not relate to unlawful practices covered by this chapter, is not relevant to the charge that is the subject matter of the hearing or investigation or does not describe with sufficient particularity the physical evidence whose production is required. Any member of the board or any agent designated by the board may administer oaths or affirmations, examine witnesses and receive evidence.

2. Any person appearing before the board may be represented by counsel.

3. On application by the board or by the person subpoenaed, the superior court may issue an order to either:

(a) Require the subpoenaed person to appear before the board or the duly authorized agent to produce evidence relating to the matter under investigation.

(b) Revoke, limit or modify the subpoena if in the court's opinion the evidence demanded does not relate to unlawful practices covered by this chapter, is not relevant to the charge which is the subject matter of the hearing or investigation or does not describe with sufficient particularity the evidence whose production is required.

C. Patient records, including clinical records, medical reports, laboratory statements and reports, any file, film, other report or oral statement relating to diagnostic findings or treatment of patients, any information from which a patient or the patient's family might be identified or any information received and records or reports kept by the board as a result of the investigation procedure outlined in this chapter are not available to the public.

D. This section and any other law making communications between a physician and a physician's patient privileged does not apply to investigations or proceedings conducted pursuant to this chapter. The board and its employees, agents and representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this chapter.

E. Hospital records, medical staff records, medical staff review committee records and testimony concerning these records and proceedings related to the creation of these records are not available to the public, shall be kept confidential by the board and are subject to the same provisions concerning discovery and use in legal actions as are the original records in the possession and control of hospitals, their medical staffs and their medical staff review committees. The board shall use such records and testimony during the course of investigations and proceedings pursuant to this chapter.

F. The court may find a person who does not comply with a subpoena issued pursuant to this section in contempt of court.

32-1451.02. Disciplinary action; reciprocity

A. The board shall initiate an investigation pursuant to section 32-1451 if a medical regulatory board in another jurisdiction in the United States has taken disciplinary action against a licensee for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

B. The board shall order the summary suspension of a license pending proceedings for revocation or other action if a medical regulatory board in another jurisdiction in the United States has taken the same action because of its belief that the public health, safety or welfare imperatively required emergency action.

32-1451.03. Complaints; requirements; confidentiality; exception

A. The board shall not act on its own motion or on any complaint received by the board in which an allegation of unprofessional conduct or any other violation of this chapter against a professional who holds an Arizona license occurred more than four years before the complaint is received by the board. The time limitation does not apply to:

1. Medical malpractice settlements or judgments or allegations of sexual misconduct or if an incident or occurrence involved a felony, diversion of a controlled substance or impairment while practicing by the licensee.

2. A board's consideration of the specific unprofessional conduct related to a licensee's failure to disclose conduct or a violation as required by law.

B. If a complainant wishes to have the complainant's identifying information withheld from the physician against whom the allegation of unprofessional conduct is being made, the board shall enter into a written agreement with the complainant stating that the complainant's identifying information will not be provided to the physician against whom the allegation of unprofessional conduct is being made to the extent consistent with the administrative appeals process. The board shall post this policy on the board's website where a person would submit a complaint online.

C. The board shall not open an investigation if identifying information regarding the complainant is not provided.

32-1451.04. Burden of proof

Except for disciplinary matters brought pursuant to section 32-1401, paragraph 27, subdivision (aa), the board has the burden of proof by clear and convincing evidence for disciplinary matters brought pursuant to this chapter.

32-1452. Substance abuse treatment and rehabilitation; confidential program; private contract; funding; license restrictions; immunity

A. The board may establish a confidential program for the treatment and rehabilitation of doctors of medicine who are licensed pursuant to this chapter and physician assistants who are licensed pursuant to chapter 25 of this title and who are impaired by alcohol or drug abuse. This program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. The board may contract with other organizations to operate the program established pursuant to subsection A of this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.
2. Release to the board on demand of all treatment records.
3. Immediate reporting to the board of the name of an impaired doctor or physician assistant whom the treating organization believes to be misusing chemical substances.
4. Reports to the board, as soon as possible, of the name of a doctor or physician assistant who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.

C. The board may allocate an amount of not to exceed forty dollars from each fee it collects from the biennial renewal of active licenses pursuant to section 32-1436 for the operation of the program established by this section.

D. A doctor of medicine or physician assistant who commits unprofessional conduct as defined in section 32-1401, paragraph 27, subdivision (f) shall agree to enter into a consent agreement with the board or the doctor or physician assistant shall be placed on probation or shall be subject to other action as provided by law.

E. In order to determine that a doctor of medicine or physician assistant who has been placed on probationary order or who has entered into a consent agreement pursuant to this section has not committed unprofessional conduct as defined in section 32-1401, paragraph 27, subdivision (f) after that order is no longer in effect, the board or its designee may require the doctor of medicine or physician assistant to submit to body fluid examinations and other examinations known to detect the presence of alcohol or other drugs at any time within five consecutive years following termination of the probationary order or consent agreement.

F. A doctor of medicine or physician assistant who is or was under a consent agreement or probationary order that is no longer in effect and who commits unprofessional conduct as defined in section 32-1401, paragraph 27, subdivision (f) shall request the board to place the license on inactive status with cause. If the doctor or physician assistant fails to do this, the board shall summarily suspend the license pursuant to section 32-1451, subsection D. In order to reactivate the license, the doctor or physician assistant shall successfully complete a long-term care residential program, an inpatient hospital treatment program, an intensive outpatient treatment program or any combination of these programs and shall meet the applicable requirements of section 32-1431, subsection D. After the doctor or physician assistant completes treatment, the board shall determine whether it should refer the matter for a formal hearing for the purpose of suspending or revoking the license or to place the licensee on probation for a minimum of five years with restrictions necessary to ensure the public's safety.

G. The board shall revoke the license of a doctor of medicine or physician assistant if that licensee commits unprofessional conduct as defined in section 32-1401, paragraph 27, subdivision (f) and was previously placed on probation pursuant to subsection D of this section and the probation is no longer in effect. The board may accept the surrender of the license if the licensee admits in writing to being impaired by alcohol or drug abuse.

H. An evaluator, teacher, supervisor or volunteer in the board's substance abuse treatment and rehabilitation program who acts in good faith within the scope of that program is not subject to civil liability, including malpractice liability, for the actions of a doctor or physician assistant who is attending the program pursuant to board action.

32-1452.01. Mental, behavioral and physical health evaluation and treatment; confidential program; private contract; immunity

A. The board may establish a confidential program for the evaluation, treatment and monitoring of persons who are licensed pursuant to this chapter and chapter 25 of this title and who have medical, psychiatric, psychological or behavioral health disorders that may impact their ability to safely practice medicine or perform health care tasks. The program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. A licensee who has a medical, psychiatric, psychological or behavioral health disorder described in subsection A of this section may agree to enter into a consent agreement for participation in a program established pursuant to this section.

C. The board may contract with other organizations to operate a program established pursuant to this section. A contract with a private organization must include the following requirements:

1. Periodic reports to the board regarding treatment program activity.
2. Release to the board on demand of all treatment records.
3. Immediate reporting to the Arizona medical board of the name of a licensee who the treating organization believes is incapable of safely practicing medicine or performing health care tasks. If the licensee is a physician assistant, the Arizona medical board shall immediately report this information to the Arizona regulatory board of physician assistants.

D. An evaluator, teacher, supervisor or volunteer in a program established pursuant to this section who acts in good faith within the scope of that program is not subject to civil liability, including malpractice liability, for the actions of a licensee who is attending the program pursuant to board action.

32-1453. Judicial review

Except as provided in section 41-1092.08, subsection H, an appeal to the superior court in Maricopa county may be taken from final decisions of the board pursuant to title 12, chapter 7, article 6.

32-1454. Injunction

A. An injunction shall issue forthwith to enjoin the practice of medicine by either of the following:

1. One not licensed to practice medicine or exempt from the requirement therefor pursuant to this chapter.
2. A doctor of medicine whose continued practice will or well might cause irreparable damage to the public health and safety prior to the time proceedings under section 32-1451 could be instituted and completed.

B. In a petition for injunction pursuant to the paragraph numbered 1 of subsection A of this section it shall be sufficient to charge that the respondent on a day certain in a named county engaged in the practice of medicine without a license and without being exempt from the requirements therefor pursuant to this chapter. No showing of damage or injury as the result thereof shall be required.

C. In a petition for injunction pursuant to the paragraph numbered 2 of subsection A of this section there shall be set forth with particularity the facts which make it appear that irreparable damage to the public health and safety will or well might occur prior to the time proceedings under section 32-1451 could be instituted and completed.

D. An injunction shall issue forthwith to enjoin any act specified in section 32-1455, subsection B.

E. Such petition shall be filed by the board in the superior court of Maricopa county or in the county where the defendant resides or is found.

F. Issuance of injunction shall not relieve the respondent from being subject to any other proceedings under law provided for in this chapter or otherwise, and violation of an injunction shall be punished as for contempt of court.

G. In all other respects injunction proceedings under this section shall be governed as near as may be by the law otherwise applicable to injunctions.

32-1455. Violation; classification

A. The following acts are class 5 felonies:

1. The practice of medicine by a person not licensed or exempt from licensure pursuant to this chapter.
2. Securing a license to practice medicine pursuant to this chapter by fraud or deceit.
3. Impersonating a member of the board in issuing a license to practice medicine to another.

B. The following acts if committed by a person not licensed under this chapter or exempt from licensure pursuant to section 32-1421 are class 2 misdemeanors:

1. The use of the designation "M.D." in a way that would lead the public to believe that a person was licensed to practice medicine in this state.
2. The use of the designation "doctor of medicine", "physician", "surgeon", "physician and surgeon" or any combination thereof unless such designation additionally contains the description of another branch of the healing arts.
3. The use of the designation "doctor" by a member of another branch of healing arts unless there is set forth with each such designation the other branch of the healing arts concerned.
4. The use of any other words, initials, symbols or combination thereof which would lead the public to believe such person is licensed to practice medicine in this state.

32-1456. Medical assistants; allowable tasks; training; use of title; violation; classification

A. A medical assistant may perform the following medical procedures under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner:

1. Take body fluid specimens.
2. Administer injections.

B. The board by rule may prescribe other medical procedures that a medical assistant may perform under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner on a determination by the board that the procedures may be competently performed by a medical assistant.

C. Without the direct supervision of a doctor of medicine, physician assistant or nurse practitioner, a medical assistant may do the following tasks:

1. Perform billing and coding.
2. Verify insurance.
3. Make patient appointments.
4. Perform scheduling.
5. Record a doctor's findings in patient charts and transcribe materials in patient charts and records.
6. Perform visual acuity screening as part of a routine physical.
7. Take and record patient vital signs and medical history on medical records.

D. The board by rule shall prescribe medical assistant training requirements. The training requirements for a medical assistant may be satisfied through a training program that meets all of the following:

1. Is designed and offered by a physician.
2. Meets or exceeds any of the approved training program requirements specified in rule.
3. Verifies the entry-level competencies of a medical assistant as prescribed by rule.
4. Provides written verification to the individual of successful completion of the training program.

E. A person who uses the title medical assistant or a related abbreviation is guilty of a class 3 misdemeanor unless that person is working as a medical assistant under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner or possesses written verification of successful completion of a training program provided pursuant to subsection D of this section.

32-1457. [Acquired immune deficiency syndrome; disclosure of patient information; immunity; definition](#)

A. Notwithstanding section 32-1401, it is not an act of unprofessional conduct for a doctor of medicine to report to the department of health services the name of a patient's spouse or sex partner or a person with whom the patient has shared hypodermic needles or syringes if the doctor of medicine knows that the patient has contracted or tests positive for the human immunodeficiency virus and that the patient has not or will not notify these people and refer them to testing. Before making the report to the department of health services, the doctor of medicine shall first consult with the patient and ask the patient to release this information voluntarily.

B. It is not an act of unprofessional conduct for a doctor of medicine who knows or has reason to believe that a significant exposure has occurred between a patient who has contracted or tests positive for the human immunodeficiency virus and a health care or public safety employee to inform the employee of the exposure. Before informing the employee, the doctor of medicine shall consult with the patient and ask the patient to release this information voluntarily. If the patient does not release this information the doctor of medicine may do so in a manner that does not identify the patient.

C. This section does not impose a duty to disclose information. A doctor of medicine is not civilly or criminally liable for either disclosing or not disclosing information.

D. If a doctor of medicine decides to make a disclosure pursuant to this section, he may request that the department of health services make the disclosure on his behalf.

E. For the purposes of this section, "significant exposure" means contact of a person's ruptured or broken skin or mucous membranes with another person's blood or body fluids, other than tears, saliva or perspiration, of a magnitude that the centers for disease control of the United States public health service have epidemiologically demonstrated can result in transmission of the human immunodeficiency virus.

32-1458. Reinstatement of revoked or surrendered license

A. On written application, the board may issue a new license to a physician whose license was previously revoked by the board or surrendered by the applicant if the applicant demonstrates to the board's satisfaction that the applicant is completely rehabilitated with respect to the conduct that was the basis for the revocation or the surrender. In making its decision, the board shall determine:

1. That the applicant has not engaged in any conduct during the revocation or surrender period that would have constituted a basis for revocation pursuant to section 32-1451.
2. If a criminal conviction was a basis of the revocation or surrender, that the applicant's civil rights have been fully restored pursuant to statute or any other applicable recognized judicial or gubernatorial order.
3. That the applicant has made restitution to any aggrieved person as ordered by a court of competent jurisdiction.
4. That the applicant demonstrates any other standard of rehabilitation the board determines is appropriate.

B. Except as provided in subsection C of this section, a person shall not submit an application for reinstatement less than five years after the date of revocation or surrender.

C. The board shall vacate its previous order to revoke a license if that revocation was based on a conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The physician may submit an application for reinstatement as soon as the court enters the reversal.

D. An applicant for reinstatement shall comply with all licensing requirements prescribed by this chapter.

32-1471. Health care provider and any other person; emergency aid; nonliability

Any health care provider licensed or certified to practice as such in this state or elsewhere, or a licensed ambulance attendant, driver or pilot as defined in section 41-1831, or any other person who renders emergency care at a public gathering or at the scene of an emergency occurrence gratuitously and in good faith shall not be liable for any civil or other damages as the result of any act or omission by such person rendering the emergency care, or as the result of any act or failure to act to provide or arrange for further medical treatment or care for the injured persons, unless such person, while rendering such emergency care, is guilty of gross negligence.

32-1472. Limited liability for emergency health care at amateur athletic events

A health care provider licensed or certified pursuant to title 32 who agrees with any person or school to voluntarily attend an amateur athletic practice, contest or other event to be available to render emergency health care within the provider's authorized scope of practice and without compensation to an athlete injured during such event is not liable for any civil or other damages as the result of any act or omission by the provider rendering the emergency care, or as the result of any act or failure to act to provide or

arrange for further medical treatment or care for the injured athlete, if the provider acts in good faith without gross negligence.

32-1481. Limitation of liability

A. No physician, surgeon, hospital or person who assists a physician, surgeon or hospital in obtaining, preparing, injecting or transfusing blood or its components from one or more human beings to another human being shall be liable on the basis of implied warranty or strict tort liability for any such activity but such person or entity shall be liable for his or its negligent or wilful misconduct.

B. No nonprofit blood bank, tissue bank, donor or entity who donates, obtains, processes or preserves blood or its components from one or more human beings for the purpose of transfusing or transferring blood or its components to another human being shall be liable on the basis of implied warranty or strict tort liability for any such activity but such person or entity shall be liable for his or its negligent or wilful misconduct.

32-1482. Reporting of hepatitis cases

The director of the department of health services for the purposes of reducing the transmission of hepatitis by injection or transfusion of blood and its components shall adopt rules and regulations for reporting of cases of hepatitis and provide for the dissemination of information about such hepatitis cases to all federally licensed blood banks in the state and health care institutions which request such information.

32-1483. Notification to donors

Pursuant to rules promulgated by the director of the department of health services, all federally registered blood banks, blood centers and plasma centers in this state shall notify blood donors of any test results with significant evidence suggestive of syphilis, HIV or hepatitis B.

32-1491. Dispensing of drugs and devices; exception; civil penalty; conditions; definition

A. Except as provided in subsections B and F of this section, a doctor of medicine may dispense drugs and devices kept by the doctor if:

1. All drugs are dispensed in packages labeled with the following information:

(a) The dispensing doctor's name, address and telephone number.

(b) The date the drug is dispensed.

(c) The patient's name.

(d) The name and strength of the drug, directions for its use and any cautionary statements.

2. The dispensing doctor enters into the patient's medical record the name and strength of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

3. The dispensing doctor keeps all drugs in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.

4. The doctor registers with the board to dispense drugs and devices and pays the registration fee prescribed by section 32-1436.

B. A doctor of medicine may not dispense a schedule II controlled substance that is an opioid, except for an implantable device or an opioid that is for medication-assisted treatment for substance use disorders.

C. Except in an emergency situation, a doctor who dispenses drugs without being registered by the board to do so is subject to a civil penalty by the board of at least \$300 and not more than \$1,000 for each transaction and is prohibited from further dispensing for a period of time as prescribed by the board.

D. Before a physician dispenses a drug pursuant to this section, the physician shall give the patient a prescription and inform the patient that the prescription may be filled by the prescribing physician or by a pharmacy of the patient's choice.

E. Except as provided in subsection F of this section, a doctor shall dispense only to the doctor's own patient and only for conditions being treated by that doctor. The doctor shall provide direct supervision of a medical assistant, nurse or attendant involved in the dispensing process. For the purposes of this subsection, "direct supervision" means that a doctor is present and makes the determination as to the legitimacy or the advisability of the drugs or devices to be dispensed.

F. A physician who dispenses not more than a two-day supply of a noncontrolled substance medication that is kept by a health care institution may dispense the noncontrolled substance medication under the dispensing registration of the medical director of the health care institution's emergency department or satellite emergency department and is not required to register to dispense medications pursuant to this section if both of the following apply:

1. The physician dispenses only to patients of the health care institution's emergency department or satellite emergency department for conditions diagnosed or treated at the emergency department or satellite emergency department.

2. The physician works only at the health care institution's emergency department or satellite emergency department.

G. This section shall be enforced by the board, which shall establish rules regarding labeling, recordkeeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic reviews of dispensing practices to ensure compliance with this section and applicable rules.

H. For the purposes of this section, "dispense" means the delivery by a doctor of medicine of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.